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# REVISED CODES OF MONTANA

## VOLUME 1

### Part 1

### 1977 Cumulative Supplement

*Containing*

THE 1972 CONSTITUTION OF THE STATE OF MONTANA AND  
AMENDMENTS TO PROVISIONS AND NEW PROVISIONS  
APPROVED SINCE PUBLICATION OF REPLACEMENT  
VOLUME 1 (PART 1) OF THE 1947 REVISED CODES

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 1  
(PART 1) THROUGH VOLUME 557, PACIFIC  
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AND

PARALLEL REFERENCE TABLES SUPPLEMENTING  
REPLACEMENT VOLUME 1 (PART 1)

*Edited by*

THE PUBLISHERS' EDITORIAL STAFF

THE ALLEN SMITH COMPANY

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Indianapolis, Indiana 46202



# REVISED CODES OF MONTANA

VOLUME I

Part I

1977 Cumulative Supplement

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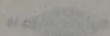
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## CONSTITUTIONAL AMENDMENTS IN VOLUME 1 (PART 1)

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# AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES

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## AMENDMENT 14

1. \* \* \* [Same as parent volume.]

2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for president and vice-president of the United States, representatives in Congress, the executive and judicial officers of a state, or the members of the Legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

3 to 5. \* \* \* [Same as parent volume.]

### Compiler's Notes

Section 2 of Amendment 14 is printed above to correct a typographical error in

the parent volume by substituting "excluding" for "including" in the first sentence.

## AMENDMENT 23

1. The district constituting the seat of government of the United States shall appoint in such manner as the congress may direct:

A number of electors of president and vice-president equal to the whole number of senators and representatives in congress to which the district would be entitled if it were a state, but in no event more than the least populous state; they shall be in addition to those appointed by the states, but they shall be considered, for the purposes of the election of president and vice-president, to be electors appointed by a state; and they shall meet in the district and perform such duties as provided by the twelfth article of amendment.

2. The congress shall have power to enforce this article by appropriate legislation.

The twenty-third amendment was submitted by Congress on June 16, 1960, declared in force April 3, 1961.

## CONSTITUTION OF THE UNITED STATES

### AMENDMENT 24

1. The right of citizens of the United States to vote in any primary or other election for president or vice-president, for electors for president or vice-president, or for senator or representative in congress, shall not be denied or abridged by the United States or any state by reason of failure to pay any poll tax or other tax.

2. The congress shall have power to enforce this article by appropriate legislation.

The twenty-fourth amendment was submitted by Congress on January 10, 1962, declared in force February 4, 1964.

### AMENDMENT 25

1. In case of the removal of the president from office or of his death or resignation, the vice-president shall become president.

2. Whenever there is a vacancy in the office of the vice-president, the president shall nominate a vice-president who shall take office upon confirmation by a majority vote of both houses of congress.

3. Whenever the president transmits to the president pro tempore of the senate and the speaker of the house of representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the vice-president as acting president.

4. Whenever the vice-president and a majority of either the principal officers of the executive departments or of such other body as congress may by law provide, transmit to the president pro tempore of the senate and the speaker of the house of representatives their written declaration that the president is unable to discharge the powers and duties of his office, the vice-president shall immediately assume the powers and duties of the office as acting president.

Thereafter, when the president transmits to the president pro tempore of the senate and the speaker of the house of representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the vice-president and a majority of either the principal officers of the executive department or of such other body as congress may by law provide, transmit within four days to the president pro tempore of the senate and the speaker of the house of representatives their written declaration that the president is unable to discharge the powers and duties of his office. Thereupon congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the congress, within twenty-one days after receipt of the latter written declaration, or, if congress is not in session, within twenty-one days after congress is required to assemble, determines by two-thirds vote of both houses that the president is unable to discharge the powers and duties of his office, the vice-president shall continue to discharge the

## CONSTITUTION OF THE UNITED STATES

same as acting president; otherwise, the president shall resume the powers and duties of his office.

The twenty-fifth amendment was submitted by Congress on July 7, 1965, declared in force February 23, 1967.

### AMENDMENT 26

1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

2. The Congress shall have the power to enforce this article by appropriate legislation.

The twenty-sixth amendment was submitted by Congress on January 21, 1971, declared in force July 5, 1971.

### RATIFICATION OF EQUAL RIGHTS AMENDMENT

**Note:** House Joint Resolution No. 4 provides as follows:

"WHEREAS, the ninety-second congress of the United States of America at its second session, in both houses, by a constitutional majority of two-thirds ( $\frac{2}{3}$ ) thereof, adopted the following proposition to amend the constitution of the United States of America in the following words:

#### 'JOINT RESOLUTION

'Proposing an amendment to the Constitution of the United States relative to equal rights for men and women.

'Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

#### 'Article —

'Section 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

'Sec. 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

'Sec. 3. This amendment shall take effect two years after the date of ratification.'  
"NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

"That the proposed amendment to the Constitution of the United States of America be and the same is hereby ratified, and

"BE IT FURTHER RESOLVED, that certified copies of this resolution be forwarded by the secretary of state to the administrator of the general services administration, Washington, D.C., and the President of the Senate and the Speaker of the House of Representatives of the Congress of the United States."





# THE ENABLING ACT

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## § 1. \* \* \*

### References

Spaberg v. Johnson, 143 M 500, 392 P 2d 78.

## § 4. \* \* \*

### Crime on Indian Reservation

Conviction of non-Indian for killing two bull elk on Crow Indian Reservation during season closed by state fish and game laws was not in conflict with act of Congress providing penalty for trespass to possessory rights of reservation Indians nor in conflict with Montana Enabling Act providing that Indian lands shall remain under the absolute jurisdiction and control of Congress of United States. State v. Danielson, 149 M 438, 427 P 2d 689.

### Property and Income Taxation of Flathead Reservation Indians

This section, when read in conjunction with the Treaty of Hell Gate, 12 Stat. 975, the Buck Act, 4 U.S.C., § 104 et seq., and the General Allotment Act, 25 U.S.C., § 331 et seq., does not create a statutory basis permitting the state to tax Flathead reservation land held by Indians, or Indian income from activities carried on within the boundaries of the reservation; therefore, no such power exists. Moe v. Confederated Salish & Kootenai Tribes of Flathead Reservation, — US —, — L Ed 2d —, 96 S Ct 1634.

§ 11. That all lands granted by this act shall be disposed of only at public sale after advertising—tillable lands capable of producing agricultural crops for not less than ten dollars (\$10.00) per acre, and lands principally valuable for grazing purposes for not less than five dollars (\$5.00) per acre. Any of the said lands may be exchanged for other lands, public or private, of equal value and as near as may be of equal area, but if any of the said lands are exchanged with the United States such exchange shall be limited to surveyed, nonmineral, unreserved public lands of the United States within the state.

Except as otherwise provided herein, the said lands may be leased under such regulations as the legislature may prescribe. Leases for the production of minerals, including leases for exploration for oil, gas, and other hydrocarbons, and the extraction thereof, shall be for such term of years and on such conditions as may be from time to time provided by the legislatures of the respective states; leases for grazing and agricultural purposes shall be for a term not longer than ten years; and leases for development of hydroelectric power shall be for a term not longer than fifty years.

The state may also, upon such terms as it may prescribe grant such easements or rights in any of the lands granted by this act, as may be acquired in privately owned lands through proceedings in eminent domain; provided, however, that none of such lands, nor any estate or interest therein, shall ever be disposed of except in pursuance of general laws pro-

## ENABLING ACT

viding for such disposition, nor unless the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the state.

With the exception of the lands granted for public buildings, the proceeds from the sale and other permanent disposition of any of the said lands and from every part thereof, shall constitute permanent funds for the support and maintenance of the public schools and the various state institutions for which the lands have been granted. Rentals on leased land, proceeds from the sale of timber and other crops, interest on deferred payments on land sold, interest on funds arising from these lands, and all other actual income, shall be available for the acquisition and construction of facilities, including the retirement of bonds authorized by law for such purposes, and for the maintenance and support of such schools and institutions. Any state may, however, in its discretion, add a portion of the annual income to the permanent funds.

The lands hereby granted shall not be subject to pre-emption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for the purposes for which they have been granted.

NOTE.—This section given as last amended by an act of Congress, June 30, 1967, 81 Stat. at L. 106.

lands for underground storage of natural gas does not violate this section. State ex rel. Hughes v. State Board of Land Comms., 137 M 510, 353 P 2d 331, 335.

### **Leasing for Underground Storage**

The law authorizing the lease of state

### **§ 25. \* \* \***

#### **Compiler's Note**

A note under this section in the parent volume refers to an act of congress, ch.

183, 62 Stat. at L. 170. The correct date of the act is April 13, 1948, not 1949 as shown in the parent volume.

1889

CONSTITUTION

OF THE

STATE OF MONTANA

[Replaced by the 1972 Constitution, effective July 1, 1973]

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ARTICLE III—A DECLARATION OF RIGHTS OF THE PEOPLE  
OF THE STATE OF MONTANA

**Sec. 1.**

**References**

Cited in *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 912.

**Sec. 2.**

**References**

Cited in *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 909, 912.

**Sec. 3.**

**Gasoline Tax Refund**

Motorboat operator could not raise due process or equal protection objections to gasoline tax statute making no provision for nonhighway use refund since statute made gasoline dealer taxpayer, rather than consumer, and consumer, as motorboat operator, was not proper representative of all nonhighway users. *Harvey v. Blewett*, 151 M 427, 443 P 2d 902.

**Retail Installment Sales Act**

The Retail Installment Sales Act is constitutional both before and after the 1971 amendments making it applicable to revolving charge accounts; the act did not interfere with the right to acquire property guaranteed by this provision since the legislative classifications in the act are constitutionally permissible. *Cecil v. Allied Stores Corp.*, — M —, 513 P 2d 704.

**Statutes Invalid under This Provision**

Sections 3 and 27 of this article serve to inhibit the police power in this state, and chapter 153 of the session laws of Montana, 1961, which discriminatorily restrained the use of trading stamps or other redeemable devices in retail business by imposing an unreasonably high and prohibitive tax was unconstitutional under these sections. *Garden Spot Market, Inc. v. Byrne*, 141 M 382, 378 P 2d 220.

Chapter 277, Laws of 1965, providing for nonresident contractors' license fees, was invalid under this section since, by imposing a one per cent tax on gross receipts, rather than on profits, it could have deprived contractors of their right to engage in business as protected by the provisions of this section. *State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization*, 145 M 380, 403 P 2d 635, distinguished in — M —, 505 P 2d 102, 107.



Sections 1-829 to 1-832, imposing a tax on each passenger enplaning on an air common carrier at a Montana airport, are repugnant to this section in creating an

unreasonable and undue discrimination. *Northwest Airlines, Inc. v. Joint City-County Airport Board*, 154 M 352, 463 P 2d 470.

## Sec. 4.

### Corporate License Tax on Organization of Church Society

The corporate license tax imposed under R. C. M. 1947, section 84-1501 et seq., on the agricultural activities of a religious society formed for the purposes of farm-

ing, stock growing, and other branches of agriculture does not conflict with constitutional provisions relating to religious freedom. *State v. King Colony Ranch*, 137 M 145, 350 P 2d 841.

## Sec. 6.

### Jurisdiction Over Indian Divorce

State has jurisdiction over divorce action brought by an Indian plaintiff against an Indian defendant, both residing on reservation, since the power to grant a divorce has not been pre-empted by the federal government and does not interfere with reservation self-government. *State ex rel. Iron Bear v. District Court, Fifteenth Judicial Dist., Roosevelt County*, 162 M 335, 512 P 2d 1292, distinguished in 422 US 388, 47 L Ed 2d 112, 96 S Ct 947.

State court had jurisdiction over petition for divorce filed by one Indian

against another where Indian tribal court had not attempted to exercise jurisdiction over marriage and divorce; the courts of this state are open to all Indian citizens and they are entitled to the protection of the state laws and utilization of state courts. *Bad Horse v. Bad Horse*, 163 M 445, 517 P 2d 893, certiorari denied, 419 US 847, 42 L Ed 2d 76, 95 S Ct 83, distinguished in 424 US 388, 47 L Ed 2d 112, 96 S Ct 947.

### References

*State ex rel. Peery v. District Court*, 145 M 287, 400 P 2d 648; *Tooker v. State*, 147 M 207, 410 P 2d 923.

## Sec. 7.

### Consent of Accused

State did not sustain its burden of proof that defendant consented to search of his truck where defendant was a Canadian citizen born in England, was unknowledgeable of rights granted under United States law and had not been informed of his right to refuse a warrantless search. *State v. Pound*, — M —, 508 P 2d 118.

of identification and had informed officers that she had a birth certificate at her home which would substantiate the identification; marijuana and hashish found in search of defendant's purse was excluded since there was no valid reason for the officer's presence in defendant's purse and the "plain view" doctrine was not applicable. *State v. Hough*, — M —, 516 P 2d 613.

### Description in Search Warrant

Evidence obtained in a search of defendant's home was properly used to convict the defendant of grand larceny, even though the items seized were not specifically described in the search warrant pursuant to which the search and seizure was conducted. *State v. Gray*, 152 M 145, 447 P 2d 475.

### Probable Cause

Where affidavit for search warrant merely stated that affiant had knowledge and believed that designated articles taken in burglary were located on the premises but contained no facts for judicial determination, probable cause was not established. *Application of Gray*, 155 M 510, 473 P 2d 532.

### Prior Justification

Police officers who, acting upon suspicion that defendant was a runaway juvenile, had taken defendant to the sheriff's office for the purpose of identifying her and contacting her parents, were without sufficient justification for searching defendant's purse for identification where defendant had produced two items

Where affidavit for search warrant did not establish probable cause, the search warrant was illegally issued and void, and the admission as evidence of the fruits of the search was prejudicial error. *Application of Gray*, 155 M 510, 473 P 2d 532.

Where defendant lived alone in, had exclusive use of and paid rent for one room in house in which criminal activity appeared present, there was no probable

cause for issuance of warrant for search of his room in absence of showing of any criminal activity by him personally, and search conducted pursuant to such warrant was violation of this section. *State ex rel. Garris v. Wilson*, 162 M 256, 511 P 2d 15, distinguished in — M —, 527 P 2d 572.

#### Search Incident to Arrest

Search of pick-up truck was not incident to lawful arrest where initial arrest was effected and defendant placed in custody hours before the sheriff who conducted the search arrived at the scene and the state showed no exigent circumstances to justify the warrantless search such as physical danger to the law enforcement officer or loss of evidence. *State v. Pound*, — M —, 508 P 2d 118.

#### Sufficiency of Affidavit

Additional information besides that contained in affidavit for search warrant could not be used to uphold its issuance, since the affidavit itself is required to provide exclusive support for issuance of search warrant. *Application of Gray*, 155 M 510, 473 P 2d 532.

#### Sufficient Description of Premises to Be Searched

Search warrant which described the premises to be searched as "two cabins located near the Duck Creek 'Y', near west Yellowstone, Montana, near the office building at Koelzer's Duck Creek cabins" was of insufficient particularity where there were three cabins in the area of the office building and where police had good reason to believe that only one of the houses contained controlled substances. *State v. Ballew*, — M —, 516 P 2d 1159.

### Sec. 8.

#### Necessity for Indictment

Charges made by information filed after hearing before magistrate, or by leave of district court are sanctioned by statute and constitution and defendant may be held to answer, even for capital crime, without presentment or indictment by grand jury. *State v. Corliss*, 150 M 40, 430 P 2d 632, certiorari denied, 390 US 961, 88 S Ct 1063.

Complaint in a justice court, rather than indictment, was proper on charge of misdemeanor of obtaining money by false pretenses. *Petition of Brown*, 150 M 483, 436 P 2d 693.

#### Telephone Communications

It was a violation of the right of privacy guaranteed by this section for wife's sister to listen on an extension, unknown to husband, to telephone conversation between husband and wife, and sister's testimony as to threat made by husband during the conversation was inadmissible in prosecution of husband for wife's murder. *State v. Brecht*, 157 M 264, 485 P 2d 47.

#### Unreasonable Searches and Seizures

Search of defendant and seizure of illegal drugs were reasonable where his original detention for traffic offense was with probable cause, he was informed of his Miranda rights, he next voluntarily surrendered a portion of contraband, and he was then arrested and searched. *Feaster v. Wilson*, — M —, 509 P 2d 559, 560.

#### When Rights May Be Waived

Where defendant admitted a sheriff, a deputy sheriff, and two livestock inspectors onto his ranch on three separate occasions to inspect his calves, and helped them to corral the animals, he waived his constitutional right against unreasonable search and seizure by consenting to the actions of the state authorities. *State v. Peters*, 146 M 188, 405 P 2d 642, distinguished in — M —, 551 P 2d 1013.

Constitutional rights of defendant convicted of grand larceny of cattle were not violated by evidence of worked-over brands given by witnesses privileged to travel on open range on which defendant had mere nonexclusive license to graze cattle and further evidence obtained while removing cattle in vicinity of defendant's home with defendant's consent. *State v. Johnson*, 149 M 173, 424 P 2d 728.

#### Preliminary Hearing

Grant of leave to file information directly, without preliminary hearing, was neither error nor abuse of statutory privilege to bypass preliminary hearing, where motion to file directly was supported by affidavit and where preliminary hearing would have served no purpose. *State v. Johnson*, 149 M 173, 424 P 2d 728.

#### References

*City of Bozeman v. Ramsey*, 139 M 148, 362 P 2d 206, 211; *Petition of Jones*, 146 M 305, 405 P 2d 978; *Petition of Evans*, 146 M 405, 409 P 2d 456; *Tooker v. State*, 147 M 207, 410 P 2d 923.

## Sec. 9.

### Forfeiture of Estate

Prohibiting wife who plead guilty to voluntary manslaughter in death of her husband from taking of his estate by intestate succession or dower, and from taking his share of jointly owned prop-

erty, and making her a constructive trustee of that property for the benefit of beneficiaries and devisees under her husband's will, did not violate this section. *Sikora v. Sikora*, 160 M 27, 409 P 2d 808.

## Sec. 10.

### Freedom of Speech

Bank president's statement that he was displeased with verdict against bank and that jurors could not expect to do business with bank was valid exercise of free speech under this section, since statement was made 22 days after final disposition

of case and since court of which jury is a part is not above individual criticism after case is disposed of. *State ex rel. Polish v. District Court of Third Judicial District in and for County of Powell*, 156 M 220, 478 P 2d 270.

## Sec. 11.

### Ex Post Facto Application

A parole and probation statute which had not been in effect at the time prisoner began serving his sentence but was in effect following a new trial in which prisoner was reconvicted and began again serving a ten-year sentence, which had the effect of increasing prisoner's time by allowing less time off for good behavior than did the prior probation law, was ex post facto as to that prisoner. *State ex rel. Nelson v. Ellsworth*, 142 M 14, 380 P 2d 886.

General saving clause, section 43-514, interpreted so as to preserve for prosecution all criminal offenses committed prior to repeal, absent an express legislative intent to contrary contained in repealing

act, does not violate this section as constituting ex post facto legislation. *State ex rel. Huffman v. District Court*, 154 M 201, 461 P 2d 847.

### Laws Not Violating This Provision

Statute amending initiative act providing for honorarium for World War II veterans eligible to receive honorariums did not violate this section. *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 918.

The provisions of former section 32-1625, relating to the costs of relocating utility facilities, do not violate this section. *Jones v. Burns*, 138 M 268, 357 P 2d 22, 35.

## Sec. 14.

### Acts Not Violating This Provision

The requirements of subsection 9 of section 11-602, since repealed, that a portion of platted subdivisions be dedicated to public park purposes are not an unconstitutional delegation of legislative authority to city and county authorities, nor is the enforcement of these requirements a confiscation of private property without compensation or an invalid extension of the police power. *Billings Properties, Inc. v. Yellowstone County*, 144 M 25, 394 P 2d 182.

### Damages Comprehended by This Provision

Where plaintiff's property was within the announced route of proposed interstate highway and he was therefore unable to sell, lease, develop or finance said property for a period of five years after

the announcement, he was allowed no recovery under this section as no property was actually taken or damaged by the state. *Bakken v. State Highway Commission*, 142 M 166, 382 P 2d 550.

### Easement as Property

A ditch is an easement, is property as used in this section, and may not be taken for public purpose without just compensation. *Colarchik v. Watkins*, 144 M 17, 393 P 2d 786.

### Just Compensation

In eminent domain proceedings, the jury findings will generally not be disturbed on appeal unless they are so obviously and palpably out of proportion to the injury done as to be in excess of just compensation provided by this section. *State v. Peterson* 134 M 52, 328 P 2d 617, 620.



An owner may testify as to the reasonable value of the property for the general use to which he is putting it, but to go beyond that field, in estimating its worth, he must possess the qualifications required of a general witness as to value. *Alexander v. State Highway Commission*, 142 M 93, 381 P 2d 780, distinguished in 161 M 251, 505 P 2d 403, 405, explained in — M —, 513 P 2d 7; *State Highway Commission v. Keneally*, 142 M 256, 384 P 2d 770.

Where there was conflicting testimony as to amount of damage to plaintiff's land after condemnation by state of part of that land, jury's finding as to amount of damage for the injury done was not so excessive as to be a violation of this section providing for just compensation. *State Highway Commission v. Biastoch Meats, Inc.*, 145 M 261, 400 P 2d 274.

In eminent domain proceedings the findings of the district court will generally not be disturbed on appeal unless they are so obviously and palpably out of proportion to the injury done as to be in excess of just compensation provided for by this section. *State Highway Commission v. Woodcock*, 147 M 291, 411 P 2d 357.

Where condemnee's house was between fifty and sixty years old and had been converted into a multiple family dwelling, court did not err in excluding evidence of reconstruction costs or comparable sales elsewhere in determining value of the property since there was no way of determining depreciation of the old house in arriving at reconstruction cost figures, nor were there sufficient comparable sales in the area. *State Highway Commission v. Tubbs*, 147 M 296, 411 P 2d 739.

## Sec. 15.

### Previously Acquired Rights

Mandamus to compel fish pond licensee, in compliance with later statute, to construct fish ladder on diversion dam installed seven years before with approval of commission would be denied on theory that individuals who have put water to beneficial use should not have their rights arbitrarily diluted under claim of sovereign right. *Paradise Rainbows v. Fish and Game Commission*, 148 M 412, 421 P 2d 717.

## Sec. 16.

### Competency of Court-appointed Counsel

Failure of court-appointed counsel to object to certain remarks by the prosecutor was not alone sufficient to deprive

Where amount of just compensation as determined by jury is based on credible evidence as to market value of highest and best use for which land is available, the verdict and judgment will not be set aside. *State Highway Commission v. Vaughan*, 155 M 277, 470 P 2d 967.

### Municipal Property

Property held by city is defined by sec. 93-9904 as private property and, when, taken by state for more necessary public use, must be paid for in same manner as if taken from a private owner. *City of Three Forks v. State Highway Commission*, 156 M 392, 480 P 2d 826.

### Payment or Tender of Compensation

Where party sued the state for damages and just compensation, the action was treated as any other damage action and on appeal plaintiff could not claim it to be an inverse condemnation action and require the state to pay into court the amount of damages prayed for in the complaint. *State ex rel. State Highway Commission v. District Court*, 142 M 198, 383 P 2d 481.

### Trespass Damages

Where state took city property without first paying just compensation, it waived its sovereign immunity, and measure of damages properly included trespass damages. *City of Three Forks v. State Highway Commission*, 156 M 392, 480 P 2d 826.

### References

Cited or applied in *Neil v. Lewis and Clark County*, 133 M 323, 323 P 2d 270, 273.

### Rights-of-Way of Necessity

There can be implied reservations or implied grants of easement by necessity in Montana. *Thisted v. Country Club Tower Corp.*, 146 M 87, 103, 405 P 2d 432, overruling *Herrin v. Sieben*, 46 M 226, 127 P 323; *Violet v. Martin*, 62 M 335, 205 P 221 and *Simonson v. McDonald*, 131 M 494, 311 P 2d 982, 984.

defendant of due process under this section in the absence of a showing that counsel displayed such a lack of diligence and competence as to reduce the trial to



a "farce or a sham." *State v. Noller*, 142 M 35, 381 P 2d 293.

### Discharge of Court-appointed Counsel

Where court-appointed counsel failed to advise clerk's office as to what would be required for record on appeal from conviction of burglary and there was no record before the supreme court, defendant had been denied his right to effective representation by counsel on his appeal under former section 94-4806 and the cause was remanded to the district court for revocation of appointment of counsel and appointment of competent and effective counsel to prosecute the appeal properly. *State v. Bubnash*, 139 M 517, 366 P 2d 155, 158.

Where defendant charged with burglary was granted the services of court-appointed counsel under former section 94-4806, he did not have the right to discharge such counsel unless he was able to provide counsel at his own expense or desired to undertake his own defense. However, upon a proper showing, such counsel could be discharged by the trial court. *Peters v. State*, 139 M 634, 366 P 2d 158.

### Impartial Jury

District court did not abuse its discretion in denying defendant's motion for change of venue with leave to renew after trial jury was selected, where affidavits and testimony were inconclusive as to existence of county-wide bias and prejudice against defendant, and where motion was not renewed at time jury was finally selected. *State v. Logan*, 156 M 48, 473 P 2d 833.

Refusal of trial court to permit voir dire examination of prospective jurors on subjects related to defense of insanity, for which defendant had given notice, and denial to defendant of opportunity to make opening statement until after presentation of prosecution's case was improper interference with defendant's right to have jury consider his defense. *State v. Olson*, 156 M 339, 480 P 2d 822.

Section 95-1506, subsection (d), which authorizes judges to consider and to determine validity of prior conviction before imposing sentence under increased sentence law does not unconstitutionally deprive accused of right to jury trial. *Newman v. Estelle*, 156 M 502, 484 P 2d 276, certiorari denied, 404 US 966, 30 L Ed 2d 285, 92 S Ct 341.

### Perfection of Appeal

Even though supreme court dismissed appeal in criminal case because court-appointed counsel was late in filing notice of appeal, the court considered the ques-

tions presented on appeal because defendant had no voice in the appointment of counsel. *State v. Frodsham*, 139 M 222, 362 P 2d 413, 418.

### Presumption of Innocence

Instruction that while mere unexplained possession of stolen property was not sufficient to justify conviction, one found in possession of property that may have been stolen must explain such possession in order to remove effect of that fact as circumstance to be considered with other evidence pointing to guilt, did not deprive defendant of presumption of innocence. *State v. Gray*, 152 M 145, 447 P 2d 475.

### Right of Accused To Meet Witnesses against Him Face to Face

Where defendant pleaded guilty to grand larceny, the extent of his punishment should have been determined under former section 94-2706 by the exercise of a sound discretion on the part of the trial judge after the circumstances had been "presented by the testimony of witnesses examined in open court." *Kuhl v. District Court*, 139 M 536, 366 P 2d 347.

The right to confrontation is not an absolute one, and may be circumscribed by the right to take depositions as provided for in section 17, article III of the Montana constitution. *Tooker v. State*, 147 M 207, 410 P 2d 923.

Allowing testimony of purchasers in drug case to be presented by deposition was error where no subpoena had been issued for purchasers and they had appeared in state to testify at another trial six days after conclusion of accused's trial. *State v. LaCario*, — M —, 518 P 2d 982.

### Right To Appear and Defend in Person

A defendant's constitutional and statutory right to be present at trial does not encompass proceedings before the court involving matters of law, but only where the jury is hearing his cause or where his presence is essential to a fair and just determination of a substantial issue. *State v. Peters*, 146 M 188, 405 P 2d 642.

This provision and former section 94-7004, requiring the presence of a defendant at trial, do not require that the defendant be present at a hearing on a motion for a new trial because such a hearing is held after the verdict has been rendered and is not part of the trial. *State v. Peters*, 146 M 188, 405 P 2d 642.

### Right to Counsel

Indigent defendant's right to counsel does not encompass right to counsel of his choice; unless there is good cause shown why the court's appointment should not have been made, indigent

defendant must accept attorney selected by court or waive right to be represented by counsel. *State v. Forsness*, 159 M 105, 495 P 2d 176.

Where counsel appointed by court with defendant's approval effectively represented defendant for several weeks before trial, including securing postponements and filing of several motions, then defendant sought to discharge counsel the day before trial and have new counsel appointed, there was no denial of right to counsel in court's refusal to permit counsel to withdraw, thus forcing defendant to proceed to trial with appointed counsel. *State v. Forsness*, 159 M 105, 495 P 2d 176.

Denial of continuance based on substitution of counsel was not an abuse of discretion or a denial of defendants' constitutional right to counsel where defendants had refused for three months to communicate with court-appointed counsel and first attempted to obtain alternate counsel on the day before trial. *State v. Spurlock*, — M —, 506 P 2d 842.

#### Right to Introduce Evidence

In a murder prosecution the court properly refused to permit the defendant to introduce the results of a lie-detector test given five and one-half months after the crime to which it referred. *State v. Hollywood*, 138 M 561, 358 P 2d 437, 444.

### Sec. 17.

#### Right To Confront Witnesses

This provision, allowing for the taking of depositions, does not violate section 16, article III of the Montana constitution, which provides for the right to confrontation, and depositions taken under

### Sec. 18.

#### Double or Former Jeopardy

Defendant charged with sale of intoxicating liquor to a minor was not placed in former jeopardy in violation of this section, by a dismissal of the complaint upon his demurrer in justice court without any further proceedings. *State v. Moore*, 138 M 379, 357 P 2d 346, 347.

Where the defendant was charged with twenty-two counts of statutory rape, conviction on one or more of those counts could not be imposed as a bar to a prosecution for any of the other offenses charged, and where they were set forth separately in the information, there was no violation of state or federal constitutional prohibitions. *State v. Boe*, 143 M 141, 388 P 2d 372.

#### Right to Speedy Trial

Convicted forger's right to a speedy trial was not violated by delaying the trial until the defendant had been paroled from the state prison. *State v. Mielke*, 148 M 320, 420 P 2d 155, 157.

In determining whether right to speedy trial had been violated for purposes of constitution and statute requiring dismissal of action if not brought to trial within six months after filing of information, court would count only days of delay which had not been caused by defendants, sum total of which was less than six months, notwithstanding that more than six months had passed since filing of information. *State ex rel. Thomas v. District Court, Thirteenth Judicial District*, 151 M 1, 438 P 2d 554.

#### Sentence Increase

Increase of sentence under section 95-2503 did not constitute double jeopardy. *State v. Henrich*, — M —, 509 P 2d 288, 292.

#### References

*Kuhl v. District Court*, 139 M 536, 366 P 2d 347, 362; *State v. Moran*, 142 M 423, 384 P 2d 777; *Petition of Ditton*, 145 M 594, 403 P 2d 205.

authority of this provision are admissible at trial upon a showing that the witness is either dead or not within the jurisdiction. *Tooker v. State*, 147 M 207, 410 P 2d 923.

Imprisonment imposed as a punishment under a valid judgment and sentence in a criminal prosecution places the defendant once in jeopardy within the ambit of this section. In *re Williams' Petition*, 145 M 45, 399 P 2d 732, distinguished in — M —, 510 P 2d 887, 888.

Jeopardy, as applied to double punishment in the constitutional sense, requires punishment imposed as such and for that purpose and has no application to probationary rules placing reasonable restraints on a person's actions and conduct for the purpose of his rehabilitation. In *re Williams' Petition*, 145 M 45, 399 P 2d 732, distinguished in — M —, 510 P 2d 887, 888.



Information in five counts, three of which alleged larceny of more than one cow, did not violate former jeopardy provision in that each count stated separate offense under grand larceny statute making theft of each animal separate and distinct offense and in view of further statute permitting information to charge more than one offense in separate counts. *State v. Johnson*, 149 M 173, 424 P 2d 728.

Statute providing for a penalty of \$1,000 for any excess freight weight over 25,000 pounds is penalty in addition to other penalties provided by statute and violates neither double jeopardy provision of Constitution nor statute providing that when action is punishable under different provisions of Code, punishment may be had under only one of them. *State ex rel. Oleson v. District Court, Eleventh Judicial District*, 151 M 12, 438 P 2d 560.

Information charging drug offense was insufficient where it contained neither identity of informer nor specific facts concerning the offense and identity of time and place to protect accused from double jeopardy. *State ex rel. Offerdahl v. District Court*, 156 M 432, 481 P 2d 338.

Defendant who had been acquitted on directed verdict in federal court of charge of assaulting FBI agent could not subsequently be prosecuted in state court for assault arising out of same transaction, even though basis for federal acquittal was failure to prove that victim was acting in performance of duties. *State v. LeCours*, 158 M 340, 491 P 2d 1228.

### Self-Incrimination

A disbarment proceeding is not a criminal prosecution, but a special proceeding of a civil nature, and the court is not therefore precluded under former section 94-8803, from taking into consideration the accused's failure to be sworn in his own behalf. *In re Wellcome*, 23 M 450, 468, 59 P 445.

An instruction, submitted to the jury in a criminal case, embodying the provisions of former section 94-8803, which prohibited comment on defendant's failure to testify, was not open to the objection that it practically deprived accused of the presumption of innocence. *State v. Farnham*, 35 M 375, 89 P 728.

While it is the general rule that a court ought not in its instructions single out a particular witness and direct the attention of the jury to his testimony, former section 94-8803 makes an exception to the rule, and the court could properly instruct that the jury, in judging the credibility of one on trial for a crime and the

weight to be given to his testimony, could take into consideration the fact that he was the defendant, and the nature and enormity of the crime of which he stood charged. *State v. De Lea*, 36 M 531, 93 P 814.

Where defendant did not testify in his own behalf, an instruction in the words of former section 94-8803 that if defendant did testify, the jury, in judging of the credibility and weight of his testimony, could take into consideration the fact that he was the defendant and the nature and enormity of the crime, though unnecessary, was harmless. *State v. Stevens*, 60 M 390, 199 P 256; *State v. Kessler*, 74 M 166, 239 P 1000.

In a prosecution for grand larceny, an instruction which had the effect of placing a burden on the defendant to explain his possession of stolen property was erroneous. Such a burden deprives defendant of his cloak of innocence and forces him to testify. The cases of *State v. Sparks*, 40 M 82, 105 P 87 and *State v. Willette*, 46 M 326, 127 P 1013, to the extent they impose a burden to explain or testify concerning any charge of possessing stolen goods are overruled. *State v. Greeno*, 135 M 580, 342 P 2d 1052, explained in 155 M 22, 23, 465 P 2d 821, 822.

In prosecution for second-degree assault, court did not err in giving general instruction which prescribed standard by which jury might judge defendant's credibility as authorized by former section 94-8803. *State v. Manning*, 149 M 517, 429 P 2d 625.

Instruction that mere unexplained possession of stolen property was not sufficient to justify conviction but that one found in possession of property that may have been stolen must explain such possession in order to remove effect of that fact as circumstance to be considered with other evidence pointing to guilt did not deprive defendant of his right to remain silent. *State v. Gray*, 152 M 145, 447 P 2d 475.

Conviction of petty larceny was reversed and new trial granted where prosecutor in final argument to jury made comment to jury which could only have been construed as reflecting prejudicially on defendant's failure to take stand and testify. *State v. Hart*, 154 M 310, 462 P 2d 885.

Portion of trial court's instruction to jury which stated that failure of defendant to explain his possession of stolen property pointed to his guilt did not amount to forbidden comment on defendant's failure to testify since such explanation could have been given by defendant, by having another person testify, or by introducing real evidence. *State v. Branch*, 155 M 22, 465 P 2d 821.

Prosecutor's statement to jury on voir dire that rape case has only two witnesses, the people involved, and that jury must weigh their respective testimony if defendant chooses to testify did not prejudice defendant's case by compelling him to testify contrary to his rights under this section. *State v. Anderson*, 156 M 122, 476 P 2d 780.

Involuntary nature of defendant's confession was not established under pre-Miranda criteria by findings that defendant was sixteen years old at the

time, that the confession was made during in-custody interrogation, and that defendant was advised, before making any admissions, that he could have a lawyer and did not have to say anything. *State v. White*, 158 M 238, 490 P 2d 720.

Admission of evidence of crime discovered by lawful search incident to arrest for which there was probable cause did not compel defendant to be a witness against himself. *State v. Harris*, 159 M 425, 498 P 2d 1222.

## Sec. 19.

### Amount of Bail

The amount of bail which the judge may fix is within his sound legal discretion, and is always to be a reasonable amount. *State v. McLeod*, 131 M 478, 311 P 2d 400, 407.

The trial judge in determining the amount of bail to be fixed, should take into consideration the enormity of the crime charged; the maximum penalty which the law authorizes; the pecuniary condition of the defendant; the probability of the defendant's flight to avoid punishment; his general character and reputation; the apparent nature and strength of the proof as bearing upon the probability of his conviction; and other matters bearing upon the particular case. *State v. McLeod*, 131 M 478, 311 P 2d 400, 407.

Court did not err in refusing defendant's motion to reduce bail which was initially set at \$25,000, where the person assaulted was in a very precarious condition and it was not known whether he would live or die. When the judge was advised that the victim would probably live, he reduced the bail to \$7,500 which was a

very reasonable amount. *State v. McLeod*, 131 M 478, 311 P 2d 400, 407, 408.

### Capital Offenses

First-degree murder is a bailable capital offense except in cases where it has been shown that the proof is evident or the presumption great. *State v. Zachmeier*, 153 M 64, 453 P 2d 783.

Trial court abused its discretion in denying bail after reversal of conviction for first-degree murder and remand for new trial, where defendant offered evidence of good conduct while in prison, appeared for sentencing after release on bail for two weeks after guilty verdict in the first trial, made proof as to an amount of bail and its availability, and was not a security risk; transcript of first trial did not establish presumption of guilt sufficient to deny bail where conviction had been reversed for error committed without discussion of several issues, including sufficiency of the evidence. *State ex rel. Warwick v. District Court*, 160 M 122, 500 P 2d 800.

## Sec. 20.

### Cruel and Unusual Punishment

Fourteen-year prison sentence with four years suspended, was not cruel and unusual punishment under this section or the eighth amendment to the United States Constitution on conviction of first-degree burglary where maximum prison sentence provided by statute was fifteen years. *State v. Harris*, 159 M 425, 498 P 2d 1222.

## Sec. 23.

### Declaratory Judgment

A party has a right to a jury trial on demand where the suit is for a declaratory judgment and there are triable issues

### Tax Penalty

The double penalty provided for in the income tax statute (84-4924, subd. 2, before the 1955 amendment) did not violate this section. *State ex rel. Hardy v. State Board of Equalization*, 133 M 43, 319 P 2d 1061, 1063.

### References

Cited in *State v. McLeod*, 131 M 478, 311 P 2d 400, 407; *Garden Spot Market, Inc. v. Byrne*, 141 M 382, 378 P 2d 220.

of fact. *Mahan v. Hardland*, 147 M 78, 410 P 2d 156; *State ex rel. Industrial Indemnity Co. v. District Court*, — M —, 544 P 2d 438.



**Deliberations of Jury**

Trial court did not err in denying plaintiff's motion for a new trial, on the ground of misconduct of the jury during its deliberations, supported by affidavits of four jurors indicating that the irregularity was not on a material matter in dispute, where plaintiff was probably not prejudiced by juror's misconduct in improperly referring to prior litigation in which plaintiff had been involved, the poll of the jury showing an eight to four verdict for the plaintiff. *Schmoyer v. Bourdeau*, 148 M 340, 420 P 2d 316, 317.

When the jury retires to the jury room it should be concerned only with the evidence and the law; the verdict, thus, is the result of a fair expression of opinion by all the jurors. *Schmoyer v. Bourdeau*, 148 M 340, 420 P 2d 316, 317.

**Sec. 24.****Penalty Assessment on Forfeited Bail and Fines**

In so far as statute provided for penalty assessment on forfeited bail and on fines, it was void as violation of consti-

**Sec. 27.****Arbitrary Exercise of Licensing Power**

The arrest of a person for operating a dry cleaning call office within the city without a license, where city's licensing ordinance did not cover such a business, violated the provisions against the taking of property without due process of law. *State ex rel. Willumsen v. City of Butte*, 135 M 350, 340 P 2d 535.

**Argument by Counsel**

Refusal to permit defense counsel, in opposing transfer of assault case from juvenile court to adult criminal court, to make extended oral argument on legal questions concerning the philosophy, intent and purpose of the Juvenile Court Act, the legal requirements relating to juvenile court transfer proceedings and similar matters was not a denial of due process where counsel was permitted to state his objections for the record to the extent necessary for a meaningful appellate review and was permitted to present evidence in opposition to transfer. *Lujan v. District Court, Fourth Judicial Dist., Lake County*, — M —, 505 P 2d 896.

**Change of Judge**

Denial of motion for substitution of judge for cause under section 95-1709 (b) was not a deprivation of due process absent a showing of prejudice despite fact that defendant had been tried before

**Equitable Actions**

In action to foreclose mortgage securing promissory notes, defendant was not entitled to jury trial as matter of right on his cross-complaint and counterclaim for damages, since actions for mortgage foreclosures are equitable and triable by court without jury and cannot be transformed into actions at law merely by raising an issue of law in answer. *Citizens State Bank v. Duus*, 154 M 18, 459 P 2d 696.

**References**

Cited or applied in *Application of Banschbach*, 133 M 312, 323 P 2d 1112, 1113; *Seibel v. Byers*, 136 M 39, 344 P 2d 129, 139.

tutional provision that laws for punishment of crime should be founded on principles of reformation and prevention. *State ex rel. Sanders v. City of Butte*, 151 M 171, 441 P 2d 190.

the same judge previously and that a dispute between the defendant and the judge had occurred at that trial over credit for jail time; subject judge's holding of the hearing on his own prejudice, prior sentencing of the defendant and denial of recess to allow counsel for defendant to commence an original proceeding in supreme court were not indications of an abuse of discretion. *State v. Parker*, — M —, 506 P 2d 850.

**Criminal Appeals**

Dismissal of a criminal appeal for failure to file timely notice of appeal is not a denial of due process, even though the failure was that of court-appointed counsel in whose appointment defendant had no voice. *State v. Frodsham*, 139 M 222, 362 P 2d 413, 419.

**Destruction of Property Without a Trial or Hearing**

Proceedings for the destruction of property in many cases must necessarily be summary and without a previous trial or hearing in such cases, and such proceedings are due process. *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29, 31.

**Discriminatory Tax**

Sections 1-829 to 1-832, imposing a tax on each passenger emplaning on an air common carrier at a Montana airport, are repugnant to this section in creating an

unreasonable and undue discrimination. *Northwest Airlines, Inc. v. Joint City-County Airport Board*, 154 M 352, 463 P 2d 470.

### Fundamental Rights

"Due process of law" refers to and means certain fundamental rights which our system of jurisprudence has always recognized, that is, of requiring notice to be given and a hearing had before the property may be taken, or impressed with a lien, giving to the owner thereof these constitutional prerogatives. *Great Northern Railway Co. v. Roosevelt County*, 134 M 355, 332 P 2d 501, 505, distinguished in 138 M 69, 354 P 2d 1056, 1058, and in 146 M 420, 407 P 2d 703, 706.

### Gasoline Tax Refund

Motorboat operator could not raise due process or equal protection objections to gasoline tax statute making no provision for nonhighway use refund since statute made gasoline dealer taxpayer, rather than consumer, and consumer, as motorboat operator, was not proper representative of all nonhighway users. *Harvey v. Blewett*, 151 M 427, 443 P 2d 902.

### Hearings by Public Service Commission

Where audit had been requested in utility rate increase case by opponents of increase, both sides were given ample time to present evidence and cross-examine witnesses, opponents were permitted to go into utility books with expert witnesses, and the public service commission hired independent rate experts, opponents were not denied a full and fair hearing because of posthearing audit made by the employees of the commission. *Cascade County Consumers Assn. v. Public Service Commission*, 144 M 169, 394 P 2d 856, 869, certiorari denied, 380 US 909, 85 S Ct 891. (Dissenting opinion, 144 M 169, 394 P 2d 856, 875.)

Although section 70-104 authorizes an informal hearing by public service commission in proceedings to set aside rate increases, fundamentals of fair hearing were denied parties opposing rate increase when a hearing was held by the public service commission when the opponents were not present, and when the testimony of that hearing was not spread on the record. *Cascade County Consumers Assn. v. Public Service Commission*, 144 M 169, 394 P 2d 856, 864, certiorari denied, 380 US 909, 85 S Ct 891. (Dissenting opinion, 144 M 169, 394 P 2d 856, 875.)

### Insanity Determination

Commitment of patient to state hospital in civil proceeding, without a jury trial or benefit of counsel in face of protest to jurisdiction of judge on basis that he had

previously sentenced patient to five-year prison sentence did not constitute violation of due process since patient had neither mentioned nor requested counsel or jury trial at time of hearing and since determination of sanity question was made by medical jurors and not by judge. *Petition of Brown*, 151 M 440, 444 P 2d 304.

### Jury Trial

Refusal of trial court to permit voir dire examination of prospective jurors on subjects related to defense of insanity for which defendant had given notice, and denial to defendant of opportunity to make opening statement until after presentation of prosecution's case was improper interference with defendant's right to have jury consider his defense. *State v. Olson*, 156 M 339, 480 P 2d 822.

### Laws Not Violating This Provision

Statute amending initiative act providing for honorarium for World War II veterans so as to make Korean veterans eligible to receive honorariums did not violate this section. *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 918.

The former health district law (69-801 et seq.) does not violate this section. *Bacus v. Lake County*, 138 M 69, 354 P 2d 1056, 1058, distinguished in 158 M 197, 205, 490 P 2d 221, 226.

### Milk Control Act

The price-fixing provisions of the Milk Control Act (27-401 et seq.) withstand the due process test. *Montana Milk Control Board v. Rehberg*, 141 M 149, 376 P 2d 508, 514.

### Municipal Ordinances

A city ordinance which imposed a storm sewer service charge applicable to premises within the city limits did not violate this section. *City of Billings v. Nore*, 148 M 96, 417 P 2d 458, 465.

### Penalty Assessment on Bail

Statute providing for penalty assessment on bail violated due process clause in that assessment amounted to tax on right to bail, revenue being earmarked for high school driver education. *State ex rel. Sanders v. City of Butte*, 151 M 171, 441 P 2d 190.

### Peremptory Writ

Peremptory writ of mandamus, issued after petitioners were unable to find respondent for service of an alternative writ, commanding the sheriff to bring respondent into court and to seize and deliver to the court certain books of account in respondent's possession, was void for lack of procedural due process or



fundamental fairness. *State ex rel. Nybo v. District Court*, 158 M 429, 492 P 2d 1395.

### Revenue Collections

Revenue collected by the public service commission under section 8-127 constituted an unconstitutional levy under this section and the Fourteenth Amendment of the Constitution of the United States in that the levy denied common carriers uniformity of taxation, was discriminatory, confiscatory, prohibitive and arbitrary, and was a tax on the privilege of doing business since those businesses which owned their own transportation facilities accomplished their own hauling without paying any tax, resulting in an unreasonable discrimination in favor of such carriers in that common carriers could not be competitive in price due to the gross revenue tax. *Garrett Freightlines, Inc. v. Montana Railroad & Public Service Comm.*, 161 M 482, 507 P 2d 1040, distinguished in — M —, 531 P 2d 1327.

### Right to Counsel

Petitioner was not denied his constitutional right to counsel under this section in that he was intoxicated when he received Miranda warning at time of arrest, since morning following his arrest he recalled having been warned of his rights upon arrest. *Petition of Fitzpatrick*, 154 M 512, 464 P 2d 507.

### Right to Engage in Business

In Montana, every person has a right to operate a business, subject to the applicable laws of the state and ordinances of the city, and he may not be deprived of such property right without due process of law as guaranteed by this provision. *State ex rel. Bennett v. Stow*, 144 M 599, 399 P 2d 221, distinguished in — M —, 524 P 2d 1112.

### Rural Fire Districts Law

Rural fire districts law, section 11-2008, before 1957 amendment, was unconstitutional as being in direct conflict with this section. *Great Northern Railway Co. v. Roosevelt County*, 134 M 355, 332 P 2d 501, 502, 505, 506, distinguished in 138 M 69, 354 P 2d 1058.

### Sentence Increase on Review

Increase of sentence by sentence review division under section 95-2503 was not a denial of due process of law. *State v. Henrich*, — M —, 509 P 2d 288, 292.

### Statutes and Proceedings Held Valid Under This Provision

A city, the chief of police, and police officers were not liable to a dog owner for damages, where the owner's dog was

killed by officers acting under an emergency quarantine measure which was passed to meet a threatening situation involving rabies. *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29.

A rule made by a board of health which has a relation to securing protection from bites of animals which may be rabid is a proper exercise of its functions, and determination of the means of meeting a threatening situation has been vested in the board of health, and not in the courts. *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29, 31.

Sections 3 and 27 of this article serve to inhibit the police power in this state, and chapter 153 of the session laws of Montana, 1961, which discriminatorily restrained the use of trading stamps or other redeemable devices in retail business by imposing an unreasonably high and prohibitive tax was unconstitutional under these sections. *Garden Spot Market, Inc. v. Byrne*, 141 M 382, 378 P 2d 220.

Where developers of trailer park had complied with state and city ordinances and had been granted a state license to operate the park, denial of a license by the city council for matters not contained in, nor required to be observed by the city health ordinance, thereby applying a different standard than that applied to others engaged in the same line of business, deprived developers of a property right without due process. *State ex rel. Bennett v. Stow*, 144 M 599, 399 P 2d 221, distinguished in — M —, 524 P 2d 1112.

Act providing for nonresident contractor's license fee (chapter 277, Laws of 1965), imposing a tax of one per cent of gross receipts in addition to a \$25 license fee, was arbitrary and unreasonably discriminatory in that it taxed on the basis of gross receipts rather than on profits. *State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization*, 145 M 380, 403 P 2d 635, distinguished in — M —, 505 P 2d 102, 107.

Where several jury members read newspaper article in jury room that defendant had pleaded guilty to a manslaughter charge arising out of the same events upon which the present suit for damages was brought, even though it was uncertain whether prejudicial or not and not read until after the verdict was rendered but before damages were established, error was inherently prejudicial and new trial was ordered. *Putro v. Baker*, 147 M 139, 410 P 2d 717, distinguished in — M —, 503 P 2d 538, 540.

Grazing district bylaw providing for an assessment against members owning or in control of livestock trespassing on district land did not violate this section where member at all times received timely notice of trespasses from district board, member was represented by counsel



throughout hearing before district board and before state grass commission, and a complete record was made of all testimony and exhibits offered. Appeal of Two Crow Ranch, Inc., 159 M 16, 494 P 2d 915.

#### Sufficiency of Evidence

Where medical testimony pertaining to defendant's antisocial nature and difficulty in controlling his sexual impulses may have established the defendant as a sexual deviate who should be confined for the protection of society, but was not sufficient to sustain the charge of attempting to commit a lewd and lascivious act upon a child, it was reversible error to convict

the defendant of the felony. *State v. Green*, 143 M 234, 388 P 2d 362.

#### Tax Penalty

The double penalty provided for in the income tax statute (84-4924, subd. (2), before the 1955 amendment) did not violate this section. *State ex rel. Hardy v. State Board of Equalization*, 133 M 43, 319 P 2d 1061, 1064.

#### References

Cited in *State ex rel. Burns v. City of Livingston*, 144 M 248, 395 P 2d 971, 973; *State ex rel. Peery v. District Court*, 145 M 287, 400 P 2d 648.

### Sec. 29.

#### Taxation

The "unless" clause of this section operates in the area of taxation and Art. XII, section 1a, authorizing an income tax, is merely permissive. *State v. Toomey*, 135 M 35, 335 P 2d 1051.

#### References

Cited in *Professional & Business Men's Life Ins. Co. v. Bankers Life Co.*, 163 F

Supp 274, 279; *Morgan v. Murray*, 134 M 92, 328 P 2d 644, 653; *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 912; *Seibel v. Byers*, 136 M 39, 344 P 2d 129, 139; *State ex rel. Ronish v. School Dist. No. 1*, 136 M 453, 348 P 2d 797, 801, 78 ALR 2d 1012; *State ex rel. Livingstone v. Murray*, 137 M 557, 354 P 2d 552, 556; *State ex rel. Steen v. Murray*, 144 M 61, 394 P 2d 761, 763.

## ARTICLE IV—DISTRIBUTION OF POWERS

### Sec. 1.

#### Counties

Counties are administrative or executive bodies of the state and the same rules apply as apply to any state agency in so far as this section is concerned. *Plath v. Hi-Ball Contractors, Inc.*, 139 M 263, 362 P 2d 1021, 1024.

#### Delegation of Powers by the Legislature

Former section 69-809 and the provisions of former section 69-813, relating to rules and regulations by health districts, violate this section by delegating legislative power to a board. *Bacus v. Lake County*, 138 M 69, 354 P 2d 1056, 1063, distinguished in 158 M 197, 205, 490 P 2d 221, 226.

Chapter 41 of Title 16, giving the county commissioners power to establish zoning districts and to create a commission, contains sufficient guidelines so that it is not an invalid delegation of legislative powers. *City of Missoula v. Missoula County*, 139 M 256, 362 P 2d 539, 542, explained in 139 M 263, 267, 362 P 2d 1021, 1023; *Doull v. Wohlschlager*, 139 M 274, 362 P 2d 542, 543.

The provisions of section 11-3801 et seq., granting zoning powers to city-

county planning boards and to county commissioners, are invalid as an unauthorized delegation of legislative power to counties. *Plath v. Hi-Ball Contractors, Inc.*, 139 M 263, 362 P 2d 1021, 1025.

#### Statutes Held Not To Violate This Provision

Section 93-901, dealing with disqualification of judges, does not violate the separation of powers provision of this section in that it does not impinge upon the existence or supremacy of the judicial system nor alter its jurisdiction or duties, but is a reasonable manner of providing a fair trial for all litigants. *State ex rel. Peery v. District Court*, 145 M 287, 400 P 2d 648.

#### References

Cited or applied in *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29, 32 (dissenting opinion); *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 912; *Billings Properties, Inc. v. Yellowstone County*, 144 M 25, 394 P 2d 182.

ARTICLE V—LEGISLATIVE DEPARTMENT

**Sec. 1.**

**References**

Cited or applied in *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29, 32 (dis-

senting opinion); *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 912.

**Sec. 4.**

**Repeal**

This section was repealed by Ch. 273, Laws 1965, adopted at the general election of November 8, 1966, effective under governor's proclamation, December 6, 1966.

**Constitutionality**

The portion of this provision which

states that "there shall be no more than one senator from each county" is void and unconstitutional in that it violates the equal protection clause of the fourteenth amendment of the constitution of the United States. *Herweg v. Thirty Ninth Legislative Assembly of State of Montana*, 246 F Supp 454.

**Sec. 7.**

**Constitutional Convention Delegates**

Members of the legislature may not serve as delegates to state constitutional convention, since a delegate holds a civil office under the state. *Forty-Second Legislative Assembly v. Lennon*, 156 M 416, 481 P 2d 330, distinguished in 159 M 176, 185, 496 P 2d 1120, 1125.

Delegates to the 1972 constitutional convention are considered as representatives who are prohibited by this section from holding any other state office during

the term for which elected. *Mahoney v. Murray*, 159 M 176, 496 P 2d 1120.

The term of office of delegates to the 1972 constitutional convention extended to June 30, 1973, the date of repeal of the enabling act, despite the prior adjournment sine die of the convention, especially since the convention, when it adjourned, constituted a committee to carry on many of the functions of the convention. *Mahoney v. Murray*, 159 M 176, 496 P 2d 1120.

**Sec. 11.**

**References**

*State ex rel. Easbey v. Highway Patrol Board*, 140 M 383, 372 P 2d 930, 939.

**Sec. 18.**

**Removal of State Officer**

The provisions of section 59-405, that where the term of office is not fixed by law the office is held at the pleasure of

the appointing power, do not violate this section. *State ex rel. MacGilvra v. District Court of the First Judicial District*, 148 M 182, 418 P 2d 874, 876.

**Sec. 20.**

**References**

Cited in *Morgan v. Murray*, 134 M 92, 328 P 2d 644, 654.

**Sec. 22.**

**Cross-References**

Printing defined, sec. 19-103.1.

**Sec. 23.**

**Acts Not Violating this Provision**

Laws of 1955, chapter 204, amending section 84-4502 and carrying a title which

is practically identical with the heading of this section as stated in the 1947 Codes and properly including additional require-

ments for bringing actions to recover taxes paid under protest, does not violate this constitutional provision. *Van Tighem v. Linnane*, 136 M 547, 349 P 2d 569, 571.

The title of the County Water District Act (16-4501 to 16-4534) does not violate this section. *Parker v. County of Yellowstone*, 140 M 538, 374 P 2d 328, 334.

The title of the Minimum Wage Act (41-2301 to 41-2307) conforms to this section. *City of Billings v. Smith*, 158 M 197, 490 P 2d 221.

#### **Deceptive Title**

Where title to appropriation bill described an appropriation to carry out provision of specific statutory law and then proceeded to nullify and defeat mandatory and all-inclusive character of that specific statutory law without reference thereto in title, latter provision was deceptive and misleading in violation of this section and therefore void. *City of Helena v. Omholt*, 155 M 212, 468 P 2d 764.

#### **Effect of Subsequent Codification on Defect**

Former section 91-4321 was enacted in 1943 and was carried forward in the Codes of 1947 without change. The 1947 Codes were regularly adopted by the legislature with this act incorporated therein without reference to its original title. Any defect in title was cured by its adoption into the 1947 Code. *State v. Rice*, 134 M 265, 329 P 2d 451, 453.

### **Sec. 24.**

#### **References**

*State ex rel. Easbey v. Highway Patrol Board*, 140 M 383, 372 P 2d 930, 939.

### **Sec. 26.**

#### **Divorce Proceedings**

Proceedings for divorce undoubtedly are statutory, but jurisdiction in matters of divorce is constitutional and may not be abridged. *Trudgen v. Trudgen*, 134 M 174, 329 P 2d 225, 232.

#### **Interest on Retail Installment Sales Contracts**

In a diversity action to recover the balance due on a note and conditional sales contract executed and delivered by defendants to a North Dakota corporation and assigned by it to plaintiff, where defendants contended that the rate of interest charged them pursuant to the Montana Retail Installment Sales Act, section 74-608 was 16.3%, which exceeded the maximum rate of 10% permitted by section 47-125 and constituted a special law

#### **Incomplete Title**

Dredge Mining Regulation and Land Preservation Act (former secs. 50-1101 to 50-1114) was repugnant to this section, in that it purported to regulate sluice washing without mentioning sluice washing in its title. *Sigety v. State Board of Health*, 157 M 48, 482 P 2d 574, distinguished in 158 M 197, 490 P 2d 221, 226.

The 1971 amendment of section 11-1202 was void in so far as it appeared to delete a final paragraph excluding certain types of contracts from the bidding requirements of that section, because the title described the amendment as only an "Increase of Dollar Limitations on Bid Requirements." *Morrison-Maierle, Inc. v. City of Forsyth*, 160 M 69, 500 P 2d 395.

#### **Initiative Measure Unconstitutional**

Proposed initiative measure no. 63, which would legalize lotteries and repeal statutes pertaining to lotteries, containing more than one subject, violated this section. *State ex rel. Steen v. Murray*, 144 M 61, 394 P 2d 761, 764.

#### **Penalty Assessment on Bail**

In so far as statute provided for penalty assessment on forfeited bail and on fines it was void as a violation of the constitutional provision that no bill shall be passed containing more than one subject which shall be clearly expressed in its title. *State ex rel. Sanders v. City of Butte*, 151 M 171, 441 P 2d 190.

regulating the rate of interest on money, proscribed by this section, the federal court applied the abstention doctrine and postponed further action until the issue was determined by the supreme court of Montana. *B-W Acceptance Corp. v. Torgerson*, 234 F Supp 214, 216.

#### **Operation and Effect in General**

Chapter 34, Laws of 1957 (43-709 to 43-715), creating the legislative council, does not violate this section. *State ex rel. James v. Aronson*, 132 M 120, 314 P 2d 849, overruling *State ex rel. Mitchell v. Holmes*, 128 M 275, 274 P 2d 611.

#### **Retail Installment Sales Act**

The Retail Installment Sales Act is constitutional both before and after the 1971 amendments making it applicable to



revolving charge accounts; the act is not a special or local law regulating the rate of interest on money in violation of this provision since the finance charges imposed pursuant to the act are time price differentials rather than interest and since there is a reasonable basis for the classification and different treatment of those involved in revolving charge transactions; the act did not grant special or exclusive privileges as prohibited by this provision since the legislative classifications in the act are constitutionally permissible. *Cecil v. Allied Stores Corp.*, — M —, 513 P 2d 704.

### Special or Local Laws Forbidden

(Deduction of workmen's compensation benefits in determining retirement pay of public employee.) The provision in section 68-901, subd. (h), since repealed, requiring the deduction of workmen's compen-

sation benefits in determining the retirement pay of a public employee who is receiving workmen's compensation for a total disability is unconstitutionally discriminatory in treating totally disabled employees less favorably than those only partially disabled. *State ex rel. Morgan v. White*, 136 M 470, 348 P 2d 991.

Small Tract Financing Act's three-acre classification was not special legislation favoring rural landowners; it was reasonable in that it fostered development of state, added to its prosperity and treated all those within class equally. *Great Falls Nat. Bank v. McCormick*, 152 M 319, 448 P 2d 991.

### References

*State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization*, 145 M 380, 403 P 2d 635.

## Sec. 29.

### Relocation of Utilities

The provisions of former section 32-1625, relating to the costs of relocating

utility facilities, do not violate this section. *Jones v. Burns*, 138 M 268, 357 P 2d 22, 35.

## Sec. 30.

### Cross-References

Printing defined, sec. 19-103.1.

## Sec. 31.

### Constitutionality

Prohibition against increase or diminution of salary or emolument of public officer after election or appointment does not violate equal protection clause of U. S. Constitution. *Shubat v. State*, 157 M 143, 484 P 2d 278.

### County Officers

County officers elected or appointed before enactment of the 1969 amendment to the formula salary law (25-605) were not entitled during their then current terms to raises in salaries or emoluments therein provided. *Shubat v. State*, 157 M 143, 484 P 2d 278.

## Sec. 32.

### Construction

This section refers to the raising of money for defraying the expenses of the general government. *Morgan v. Murray*, 134 M 92, 328 P 2d 644, 648.

for local purposes are not bills for "raising revenue" within the meaning of this section. *Morgan v. Murray*, 134 M 92, 328 P 2d 644, 649.

### License Tax

Bills imposing tax or license fee to enforce policing regulation are not revenue raising measures. *Morgan v. Murray*, 134 M 92, 328 P 2d 644, 648.

### Operation and Effect

Chapter 197, Laws of 1957, authorizing indebtedness to be incurred by state for construction of educational facilities is illegal, unconstitutional and void, for the reason that it was a revenue bill which originated in the senate, contrary to the interdiction of this section. *Morgan v. Murray*, 134 M 92, 328 P 2d 644, 654.

### Local Taxes

Laws delegating authority to local governmental units to levy and collect taxes



**Sec. 34.****Laws Not Violating This Provision**

Statute amending initiative act providing for honorarium for World War II veterans so as to make Korean veterans

eligible to receive honorariums did not violate this section. *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 920.

**Sec. 35.****Laws Not Violating This Provision**

Payment of public funds to persons providing medical, hospitalization, and foster home care to indigent mothers who have sought or received assistance from private rather than public adoptive agencies does not violate this section. *Montana State Welfare Board v. Lutheran Social Services of Montana*, 156 M 381, 480 P 2d 181.

not under the control of the state, was prohibited by this section even though the legislation was for a public purpose. *Veterans' Welfare Commission v. Department of Montana, Veterans of Foreign Wars*, 141 M 500, 379 P 2d 107.

**Voter Education****Laws Violating This Provision**

An appropriation made to pay for secretarial services of two private veterans' organizations maintaining service offices in Fort Harrison, Montana, which were

Any power and authority a constitutional convention may possess to receive and expend public funds for voter education purposes must be exercised by the convention itself and may not be delegated to a committee. *State ex rel. Kvaalen v. Graybill*, 159 M 190, 496 P 2d 1127.

**Sec. 36.****Laws Not Violating This Provision**

Section 27 of the County Water District Act (16-4527) does not violate this section by delegating to a corporation the power to tax for the general health, safety, and welfare of property owners without regard to benefits to the property so

taxed. *Parker v. County of Yellowstone*, 140 M 538, 374 P 2d 328, 331.

The price-fixing provisions of the Milk Control Act (sections 27-401 (k), 27-405 (2), 27-407, 27-416) do not violate the provisions of this section. *Montana Milk Control Board v. Rehberg*, 141 M 149, 376 P 2d 508, 515, 516.

**Sec. 39.****Relocation of Utilities**

The provisions of former section 32-1625, relating to the costs of relocating utility facilities, do not violate this section. *Jones v. Burns*, 138 M 268, 357 P 2d 22, 36.

**References**

In re *Montana Trust and Legacy Fund*, 143 M 218, 388 P 2d 366; *United States v. Christensen*, 218 F Supp 722, 729.

**Sec. 40.****Constitutional Amendments**

It was a fatal defect for the legislature to ignore the governor, in neglecting and refusing to present proposed constitutional amendments to the governor in full as

passed by the house and senate for the governor's approval or disapproval. *State ex rel. Livingstone v. Murray*, 137 M 557, 354 P 2d 552, 556.

**Sec. 45.****Repeal**

This section was repealed by Ch. 273, Laws 1965, adopted at the general election

of November 8, 1966, effective under governor's proclamation, December 6, 1966.

Sec. 46. The legislative assembly in order to insure continuity of state and local governmental operations in a period of emergency resulting

from a disaster caused by enemy attack may enact laws:

(1) To provide for prompt and temporary succession to the powers and duties of elected and appointed public officers who are killed or incapacitated.

(2) To adopt other measures that may be necessary to insure the continuity of governmental operations.

Such laws shall be effective only during the emergency that affects a particular office or governmental operation, and such laws may deviate from other provisions of the Montana constitution, including but not limited to the following sections:

- (1) Section 3, Article X, seat of state government.
- (2) Section 2, Article XVI, seat of county governments.
- (3) Section 16, Article VII, succession to governor.
- (4) Section 4, Article XVI, vacancy on board of county commissioners.
- (5) Section 6, Article XVI, other vacancies in county government.
- (6) Section 45, Article V, vacancies in legislative assembly.
- (7) Section 11, Article VII, special legislative sessions.
- (8) Section 5, Article V, length of legislative session.
- (9) Section 10, Article V, quorum to do business in each house.
- (10) Section 6, Article XIX, location of county offices.
- (11) Section 1, Article VII, duties of executive officers of state.
- (12) Section 7, Article VII, appointments by governor.

#### Compiler's Notes

This constitutes the new section added to the constitution by act approved March 9, 1965 (Ch. 243, Laws 1965), adopted at

the general election of November 8, 1966, effective under governor's proclamation, December 6, 1966.

## ARTICLE VI—APPORTIONMENT AND REPRESENTATION

### Sec. 1.

#### Reapportionment

Congressional districting under chapter 44 of the Laws of 1917 (43-107) was unconstitutional where legislature had failed in three successive sessions following the

1960 census to redistrict and where the two districts then existing showed a disparity in population of 126,332 persons. *Roberts v. Babcock*, 246 F Supp 396.

Sec. 2. (1) The senate and house of representatives of the legislative assembly each shall be apportioned on the basis of population.

(2) The legislative assembly following each census made by the authority of the United States, shall revise and adjust the apportionment for representatives and senators on the basis of such census.

(3) At such time as the constitution of the United States is amended or interpreted to permit apportionment of one house of a state legislative assembly on factors other than population, the senate of the legislative assembly shall be apportioned on the basis of one senator for each county.

#### Compiler's Notes

This constitutes sec. 2 of article VI as amended by act approved March 9, 1965

(Ch. 273, Laws 1965), adopted at the general election of November 8, 1966, effective under governor's proclamation,

December 6, 1966. The amendment added paragraphs (1) and (3) and eliminated a provision for a state census.

### Constitutional Convention

The 1972 constitutional convention had to be apportioned on basis of 1970 census applicable to apportionment of house of representatives to be elected in November 1972. Forty-Second Legislative Assembly v. Lennon, 156 M 416, 481 P 2d 330.

Sec. 3. Senatorial and representative districts may be altered from time to time as public convenience may require. When a senatorial or representative district shall be composed of two or more counties, they shall be contiguous, and the districts as compact as may be.

### Compiler's Notes

This constitutes sec. 3 of article VI as amended by act approved March 9, 1965 (Ch. 273, Laws 1965), adopted at the general election of November 8, 1966, effective under governor's proclamation,

### Reapportionment

Where legislature failed to reapportion congressional districts in three successive sessions following the 1960 census in conformity with this provision and districts under chapter 44 of the Laws of 1917 (43-107) had a disparity in population of 126,332, governor and secretary of state were enjoined from proclaiming, certifying or conducting election of members of the house of representatives and court established new districts for future elections. Roberts v. Babcock, 246 F Supp 396.

December 6, 1966. The amendment made the section applicable to senatorial districts and eliminated a provision prohibiting the division of counties in the formation of representative districts.

## DECISIONS UNDER FORMER PROVISIONS

### Reapportionment

The provision of former section that "no county shall be divided in the formation of representative districts" was valid since it did not conflict with the equal protec-

tion clause of the fourteenth amendment of the constitution of the United States. Herweg v. Thirty Ninth Legislative Assembly of State of Montana, 246 F Supp 454.

## Secs. 4 to 6.

### Repeal

These sections were repealed by Ch. 273, Laws 1965, adopted at the general election of November 8, 1966, effective under governor's proclamation, December 6, 1966.

### Constitutionality

Sections 4 and 5 are void and unconstitutional in that they violate the equal protection clause of the fourteenth amendment of the constitution of the United States. Herweg v. Thirty Ninth Legislative Assembly of State of Montana, 246 F Supp 454.

## ARTICLE VII—EXECUTIVE DEPARTMENT

### Sec. 1.

#### Attorney General—Duties and Powers of

Resolution adopted by state highway commission authorizing chief counsel thereof "to employ and engage such outside fee counsel as he, in his discretion shall deem reasonable and necessary, to represent the Mountain Highway Commission in whatever type of case arises," was proper and did not infringe on any powers, duties or responsibilities of state attorney general. Woodahl v. State Highway Commission, 155 M 32, 465 P 2d 818.

#### Joint Resolutions

A joint legislative resolution is not a general law and cannot be used to control the discretion of the governor. Gildroy v. Anderson, — M —, 507 P 2d 1069.

#### References

Cited or applied in *State v. Rother*, 130 M 357, 303 P 2d 393 at 401 (dissenting opinion); *State ex rel. Easbey v. Highway Patrol Board*, 140 M 383, 372 P 2d 930, 931.



**Sec. 4.**

**Constitutional Convention Delegates**

State officers named in this section may not serve as delegates to state constitutional convention, since a delegate

holds public office. Forty-Second Legislative Assembly v. Lennon, 156 M 416, 481 P 2d 330, distinguished in 159 M 176, 185, 496 P 2d 1120, 1125.

**Sec. 8.**

**Cross-References**

Examiner as head of department of business regulation, sec. 82A-401.

**Sec. 9.**

**Parole**

The board of pardons has no power to pardon or commute a sentence, and when it grants a parole, the effect is not to

extinguish the sentence but merely to change the conditions of custody. State ex rel. Herman v. Powell, 139 M 583, 367 P 2d 553, 556.

**Sec. 12.**

**Constitutional Amendments**

It was a fatal defect for the legislature to ignore the governor, in neglecting and refusing to present proposed constitutional amendments to the governor in full as

passed by the house and senate for the governor's approval or disapproval. State ex rel. Livingstone v. Murray, 137 M 557, 354 P 2d 552, 556.

**Sec. 15.**

**Casting Deciding Vote**

The lieutenant governor of Montana, while presiding as president of the senate, possessed the requisite power to enable or entitle him to cast the deciding vote on third reading of House Bill No. 342, as amended [1961 amendment of section 31-135], at a time when the senators then present and voting were equally di-

vided. State ex rel. Easbey v. Highway Patrol Board, 140 M 383, 372 P 2d 930, 939.

**References**

Cited or applied in State v. Rother, 130 M 357, 303 P 2d 393 at 401 (dissenting opinion).

**Sec. 20.**

**Cross-References**

Board of examiners continued, sec. 82A-207.

**References**

Cited or applied in State v. Rother, 130 M 357, 303 P 2d 393 at 401 (dissenting opinion).

Sec. 21. All executive and administrative offices, boards, bureaus, commissions, agencies and instrumentalities of the executive department of state government and their respective functions, powers, and duties, except for the office of governor, lieutenant governor, secretary of the state, attorney general, state treasurer, state auditor, and superintendent of public instruction, shall be allocated by law among and within not more than twenty (20) departments by no later than July 1, 1973. Subsequently, all new powers or functions shall be assigned to departments, divisions, sections, or units in such manner as will tend to provide an orderly arrangement in the administrative organization of state govern-

ment. Temporary commissions may be established by law and need not be allocated within a principal department.

#### Compiler's Notes

This constitutes the new section added to the constitution by act approved March 17, 1969 (Ch. 1, Ex. Sess., Laws 1969), adopted at the general election of November 3, 1970, and effective under the gov-

ernor's proclamation of November 20, 1970.

#### Cross-References

Implementation of reorganization amendment, secs. 82A-101 et seq.

### ARTICLE VIII—JUDICIAL DEPARTMENTS

#### Sec. 1.

##### References

City of Bozeman v. Ramsey, 139 M 148, 362 P 2d 206, 211; State v. Frodsham, 139 M 222, 362 P 2d 413, 416; State ex

rel. Peery v. District Court, 145 M 287, 400 P 2d 648; State ex rel. Johnson v. District Court, 147 M 263, 410 P 2d 933.

#### Sec. 2.

##### Supervisory Control

Writ of supervisory control was proper where district court orders required state highway commission to quiet title against all possible lien holders of land subject to condemnation and to use valuation date more than three years beyond the alleged proper date, where orders were not appealable until after final judgment and this would result in extended and needless litigation if district court was wrong. State Highway Commission v. District

Court, 160 M 35, 499 P 2d 1228, explained in — M —, 510 P 2d 9, 11.

##### References

State v. Frodsham, 139 M 222, 362 P 2d 413, 416; Rambur v. Diehl Lumber Co., 143 M 432, 391 P 2d 1; State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648; State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization, 145 M 380, 403 P 2d 635.

#### Sec. 3.

##### District Court Jurisdiction

District judge sitting for disqualified district judge could not review validity of orders on the merits entered by disqualified judge since review amounted to attempt to exercise appellate jurisdiction in violation of constitution. State ex rel. State Highway Commission v. Kinman, 150 M 12, 430 P 2d 110, distinguished in 157 M 310, 486 P 2d 870.

clude manufacturing processes which further refine talc for use in sophisticated products. Pfizer, Inc. v. Madison County, —M —, 505 P 2d 399.

##### Original Jurisdiction

In view of necessity for 1971 legislature to call a constitutional convention pursuant to the voters' mandate in the 1970 election, and in order to prevent delays that might occur if the legislature passed an unconstitutional act, supreme court would consider and answer questions arising during the legislative session with respect to the constitutional convention in an original proceeding for declaratory judgment authorized by act of the 1971 legislature. Forty-Second Legislative Assembly v. Lennon, 156 M 416, 481 P 2d 330, distinguished in 159 M 176, 185, 496 P 2d 1120, 1125.

##### Phrase "Necessary or Proper to Compete Exercise"

It was necessary and proper within meaning of this section to issue writ of supervisory control where rights of large number of tenants could be affected, and needless litigation prevented, in action involving landlord's notice of rent increase. Walker v. Tschache, — M —, 510 P 2d 9, 11.

##### Exclusive Power

The constitution vests in the courts the exclusive power to construe and interpret legislative acts, as well as provisions of the constitution. Cottingham v. State Board of Examiners, 134 M 1, 328 P 2d 907, 913.

##### Factual Issues

Order of contempt that failed to specify facts that constituted contempt before the court was deficient under section 93-9803, since it did not provide opportunity for appellate review. State ex rel. Shea v. District Court, 156 M 266, 479 P 2d 281.

##### Net Proceeds Tax

The net proceeds tax does not apply to talc once it is past the beneficiation stage; value of mining product to be taxed is determined after initial processing of raw talc and the value should not in-

### Scope of Power to Issue Writs in General

Even if a stay, in a case where a writ of mandate is issued by a district court to compel the issuance of a license, is not provided for in the code, still the supreme court has power under this section to issue a supersedeas, or other appropriate writ, to effectuate its appellate jurisdiction, thus to insure the aggrieved board an appeal that otherwise might be of no value. *Gill v. Rafn*, 133 M 505, 326 P 2d 974, distinguished in 136 M 453, 456, 348 P 2d 797, 799, 78 ALR 2d 1012.

### Stay of Writ

Despite the prohibition in Rule 7 (c), M. R. Civ. App. P., the supreme court has power under this section to stay the execution of a peremptory writ of mandamus issued by the district court when necessary to provide an effective ap-

pellate remedy. *State ex rel. Bennett v. Dowdall*, 157 M 11, 482 P 2d 572.

### Supervisory Control—Scope of Power

Writ of supervisory control was necessary and proper to compel district court to dismiss removal petition that could not be granted even if facts alleged were proved. *State ex rel. Arnot v. District Court of First Judicial District In and For County of Lewis and Clark*, 155 M 344, 472 P 2d 302.

### References

*State v. Frodsham*, 139 M 222, 362 P 2d 413, 416; *Rambur v. Diehl Lumber Co.*, 143 M 432, 391 P 2d 1; *State ex rel. Peery v. District Court*, 145 M 287, 400 P 2d 648; *State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization*, 145 M 380, 403 P 2d 635.

## Sec. 11.

### District Court Jurisdiction

District judge sitting for disqualified district judge could not review validity of orders on the merits entered by disqualified judge since review amounted to attempt to exercise appellate jurisdiction in violation of constitution. *State ex rel. State Highway Commission v. Kinman*, 150 M 12, 430 P 2d 110, distinguished in 157 M 310, 486 P 2d 870.

### Divorce Proceedings

Proceedings for divorce undoubtedly are statutory, but jurisdiction in matters of divorce is constitutional and may not be abridged. *Trudgen v. Trudgen*, 134 M 174, 329 P 2d 225, 232.

### Postconviction Relief

District court has the jurisdiction to consider petition from inmates of state prison for postconviction relief if inmate was sent to prison from judicial district

in which petition is filed. *Gransberry v. State*, 149 M 158, 423 P 2d 853.

### Prohibition—Ministerial Function

This section does not give the district courts the jurisdiction to issue a writ of prohibition to control the discretion of an administrative body in carrying out a ministerial function. *State ex rel. Lee v. Montana Livestock Sanitary Board*, 135 M 202, 339 P 2d 487.

### References

Cited or applied in *Hustad v. Reed*, 133 M 211, 321 P 2d 1083, 1092; *Deich v. Deich*, 136 M 566, 323 P 2d 35, 38; *State ex rel. Glacier General Assurance Co. v. District Court*, 143 M 569, 393 P 2d 54; *State ex rel. Peery v. District Court*, 145 M 287, 400 P 2d 648; *Petition of Kelly*, 146 M 484, 408 P 2d 478; *State ex rel. Johnson v. District Court*, 147 M 263, 410 P 2d 933.

*Peery v. District Court*, 145 M 287, 400 P 2d 648.

## Sec. 12.

### References

Cited or applied in *Deich v. Deich*, 136 M 566, 323 P 2d 35, 38; *State ex rel.*

## Sec. 13.

### References

*State ex rel. Peery v. District Court*, 145 M 287, 400 P 2d 648.

## Sec. 14.

### References

Cited or applied in *Deich v. Deich*, 136 M 566, 323 P 2d 35, 38.



**Sec. 15.****Notice of Appeal**

Even though the supreme court dismissed an appeal in a criminal case because of failure to file timely notice of appeal, the court considered the questions raised, where the fault was that of court-appointed counsel in whose appointment

defendant had no voice. *State v. Frodsham*, 139 M 222, 362 P 2d 413, 418.

**References**

Cited in *Gill v. Rafn*, 133 M 505, 326 P 2d 974; *Rambur v. Diehl Lumber Co.*, 143 M 432, 391 P 2d 1.

**Sec. 16.****References**

*State ex rel. Peery v. District Court*, 145 M 287, 400 P 2d 648.

**Sec. 17.****References**

*State ex rel. Peery v. District Court*, 145 M 287, 400 P 2d 648.

**Sec. 19.** There shall be elected at the general election in each county of the state one county attorney, whose qualifications shall be the same as are required for a judge of the district court, except that he must be over twenty-one years of age, but need not be twenty-five years of age, and whose term of office shall be four years, and until their successors are elected and qualified. He shall have a salary to be fixed by law, one-half of which shall be paid by the state, and the other half by the county for which he is elected, and he shall perform such duties as may be required by law.

**Compiler's Note**

This constitutes sec. 19 of article VIII as amended by act approved March 6, 1961 (Ch. 164, Laws 1961), adopted at the general election of November, 1962.

This amendment increased the county attorneys' term of office from two to four years and eliminated a provision applicable only to the first county attorneys elected under the Constitution.

**Sec. 21.****Penalty Assessments on Fines**

Statute providing penalty assessments in addition to statutory fines was void for indirectly enlarging jurisdiction of justice and police courts in terms of maximum fine which may be imposed for offense

charged. *State ex rel. Sanders v. City of Butte*, 151 M 171, 441 P 2d 190.

**References**

*State ex rel. Johnson v. District Court*, 147 M 263, 410 P 2d 933.

**Sec. 24.****References**

*City of Bozeman v. Ramsey*, 139 M 148, 362 P 2d 206, 211.

**Sec. 26.****References**

*State ex rel. Peery v. District Court*, 145 M 287, 400 P 2d 648.

**Sec. 28.**

**References**

Cited or applied in First Nat. Bank of

White Sulphur Springs v. Stoyanoff, 137 M 20, 349 P 2d 1016, 1020.

Sec. 29. The justices of the supreme court and the judges of the district courts shall each be paid quarterly by the state, a salary, which shall not be diminished during the terms for which they shall have been respectively elected.

**Compiler's Note**

This constitutes sec. 29 of article VIII as amended by act approved February 27, 1963 (Ch. 92, Laws 1963), adopted at the general election of November 3, 1964.

This amendment eliminated a provision prohibiting salary increases during terms for which elected, and it also deleted a sentence setting the salaries of the first justices and judges.

**Sec. 35.**

**Constitutional Convention**

Justices and judges may not serve as delegates to state constitutional convention, since a delegate holds public office.

Forty-Second Legislative Assembly v. Lennon, 156 M 416, 481 P 2d 330, distinguished in 159 M 176, 185, 496 P 2d 1120, 1125.

**ARTICLE IX—RIGHTS OF SUFFRAGE AND QUALIFICATIONS  
TO HOLD OFFICE**

Sec. 2. Every person of the age of nineteen (19) years or over, possessing the following qualifications, shall be entitled to vote at all general elections and for all officers that now are, or hereafter may be, elective by the people, and, except as hereinafter provided, upon all questions which may be submitted to the vote of the people or electors: First, he shall be a citizen of the United States; second, he shall have resided in this state one year immediately preceding the election at which he offers to vote, and in the town, county or precinct such time as may be prescribed by law. If the question submitted concerns the creation of any levy, debt or liability the person, in addition to possessing the qualifications above mentioned, must also be a taxpayer whose name appears upon the last preceding completed assessment roll, in order to entitle him to vote upon such question. Provided, first, that no person convicted of felony shall have the right to vote unless he has been pardoned or restored to citizenship by the governor; provided, second, that nothing herein contained shall be construed to deprive any person of the right to vote who has such right at the time of the adoption of this constitution; provided, that after the expiration of five years from the time of the adoption of this constitution, no person except citizens of the United States shall have the right to vote.

**Compiler's Notes**

This constitutes sec. 2 of Article IX as amended by act approved January 31, 1969 (Ch. 14, Laws 1969), adopted at the general election of November 3, 1970, and effective under the governor's proclamation of November 20, 1970. The amendment changed the voting age from 21 to 19 years.

**Debt or Liability**

This section, in adding the property holding qualification to voting on debts or liabilities, confined the additional qualifica-

tion to only those debts or liabilities which look to ad valorem taxes for their retirement. *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 915, distinguished in 158 M 279, 491 P 2d 868, 871.

This section amended the words "debt or liability" as they appear in section 2, article XIII of the Montana Constitution, and has effectively confined them to debts or liabilities which must be retired out of ad valorem taxes. *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 916, distinguished in 158 M 279, 491 P 2d 868, 871.

Since the United States supreme court has held invalid the provisions of this section restricting to taxpayers the right to vote on measures creating a debt or liability, there is no longer any reason to limit the requirement for approval by the voters to debts to be retired from ad valorem taxes; therefore, measures authorizing the issuance of bonds secured by the pledge of portions of the constitutional sources of revenue, including income tax, corporation license tax, cigarette tax and gasoline distributors' license tax, at least create liabilities within the

meaning of this section and are invalid unless approved by the electors. *State ex rel. Ward v. Anderson*, 158 M 279, 491 P 2d 868, distinguishing *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907.

#### Racial Discrimination Prohibited

Congress is empowered, as it did in the Voting Rights Act Amendments of 1970, 42 U. S. C. § 1973aa, to prohibit use of literacy tests or other devices used to discriminate against voters on account of their race in all state and national elections. *Oregon v. Mitchell*, 400 US 112, 27 L Ed 2d 272, 91 S Ct 260.

#### Residence

As it did in the Voting Rights Act Amendments of 1970, 42 U. S. C. § 1973aa-1, Congress can prohibit states from disqualifying voters in elections for presidential and vice-presidential electors because they have not met state residency requirements, and can set residency requirements and provide for absentee balloting in presidential and vice-presidential elections. *Oregon v. Mitchell*, 400 US 112, 27 L Ed 2d 272, 91 S Ct 260.

## ARTICLE X—STATE INSTITUTIONS AND PUBLIC BUILDINGS

### Sec. 5.

#### Indigent Support

Under constitutional provision defining indigency and statute imposing duty upon county to pay for medical aid rendered indigents, fact that supposed indigent had never supported herself and apparently never would was proof of medical indigency in spite of fact she was employable and notwithstanding absence of evidence of reasons for her inability to be productive citizen. *Montana Deaconess Hospital v. Lewis and Clark County*, 149 M 206, 425 P 2d 316.

Although this section places the burden of providing for the aged, infirm and unfortunate upon the counties, in order for

the county to be obligated to pay general relief assistance, there must be specific statutory law so directing. *Pease v. Hansen*, 159 M 43, 494 P 2d 925.

#### Unreasonable Standard

Where family of ten had earnings in excess of county welfare board's standard minimum income for determining indigency, application of the standard to deny medical assistance became unreasonable where the family had considerable medical expense and a history of indebtedness. *Saint Patrick Hospital v. Powell County*, 156 M 153, 477 P 2d 340.

## ARTICLE XI—EDUCATION

### Sec. 1.

#### Education Fees

A school district may not assess charges for any course or activity offered during the regular academic year as a part of normal school functions which are reasonably related to a recognized academic and educational goal of the particular school system. *Granger v. Cascade County School Dist. No. 1*, 159 M 516, 499 P 2d 780.

School district's waiver of constitutionally invalid fees for welfare recipients and other cases of economic hardship did not validate the fees. *Granger v. Cascade County School Dist. No. 1*, 159 M 516, 499 P 2d 780.

#### Extracurricular Activities

The thorough system of education required by this section includes extra-



curricular activities sponsored by the schools, and the right to engage in such activities is constitutionally protected. *Moran v. School Dist. No. 7*, 350 F Supp 1180.

## Sec. 2.

### Unclaimed Shares and Dividends

Where corporation was voluntarily dissolved, unclaimed shares and their pro-rata share of unpaid dividends would become abandoned property and subject to

## Sec. 4.

### Cross-References

Board as head of department of state lands, sec. 82A-1101.

## Sec. 7.

### Age of Entry

The use of the term "all" is not to be taken in its universal and omnibus sense; rather, it was meant to be limited and qualified to conform to good reason to carry out the other purposes of the constitution such as to have a general, uniform and thorough system of public schools. *State ex rel. Ronish v. School Dist. No. 1*, 136 M 453, 348 P 2d 797, 78 ALR 2d 1012.

A reasonable interpretation of constitutional and statutory provisions specifying that school shall be open to children between the ages of 6 and 21 years, read again in connection with other provisions requiring a thorough education, is that a child must be allowed to enter the first grade sometime during his seventh year,

## Sec. 8.

### Parochial Schools

This section prohibits public school board from either making a levy for or expending funds for employment of teachers to teach secular subjects in parochial schools. *State ex rel. Chambers v. School District No. 10 of County of Deer Lodge*, 155 M 422, 472 P 2d 1013, distinguished in 156 M 381, 480 P 2d 181.

## Sec. 11.

### Cross-References

Board as head of department of education, sec. 82A-501.

### Delegation of Powers

The legislature in former sections 75-107 and 75-403 R. C. M. 1947, restricted

### References

Cited in *State ex rel. Ronish v. School Dist. No. 1*, 136 M 453, 348 P 2d 797, 800, 78 ALR 2d 1012.

escheat to state two years after final distribution of assets. *Barnes-King Development Co. v. Corette*, 156 M 202, 478 P 2d 868.

after reaching his sixth birthday. Each local school district has the power to admit children into the first grade who are not yet 6 years of age and each school district may establish a "cut-off" date governing entry into the first grade. *State ex rel. Ronish v. School Dist. No. 1*, 136 M 453, 348 P 2d 797, 78 ALR 2d 1012.

### Equal Protection

School district rule prohibiting extra-curricular activities, including varsity football, to married students denied them the equal protection of the laws with respect to the right granted by this section, and enforcement of the rule would be restrained by preliminary injunction. *Moran v. School Dist. No. 7*, 350 F Supp 1180.

### Services to Indigents

Payment of public funds to persons providing medical, hospitalization, and foster home care to indigent mothers who have sought or received assistance from private rather than public adoptive agencies does not violate this section. *Montana State Welfare Board v. Lutheran Social Services of Montana*, 156 M 381, 480 P 2d 181.

the board of education in delegation of its powers and this precluded college officials from contracting with teachers and instructors on behalf of the board. *Brown v. State Board of Education*, 142 M 547, 385 P 2d 643.

**Sec. 12.****References**

In re Montana Trust and Legacy Fund,  
143 M 218, 388 P 2d 366.

**ARTICLE XII—REVENUE AND TAXATION****Sec. 1.****Construction with Other Sections**

This section and section 11 of article XII of the Montana constitution must be construed together with section 15, which refers specifically to the state board of equalization. *Yellowstone Pipe Line Co. v. State Board of Equalization*, 138 M 603, 358 P 2d 55, 66.

**License Tax—Purposes for Which License Tax May Be Levied**

It was not the intention in authorizing the legislature to impose a license fee, to differentiate between the license tax, so-called, and the license fee extracted in regulatory matters, but rather to refer the general subject of licenses to the legislature. *Montana Milk Control Board v. Maier*, 140 M 38, 367 P 2d 305, 306.

**Statutes Held Invalid under This Provision**

Chapter 153 of the session laws of Montana, 1961, which discriminatorily restrained the use of trading stamps or other redeemable devices in retail business by imposing an unreasonably high and prohibitive tax, was unconstitutional under this section. *Garden Spot Market, Inc. v. Byrne*, 141 M 382, 378 P 2d 220.

**Statutes Violating This Provision**

Chapter 277, Laws of 1965, providing for nonresident contractors' license fees, was invalid under this section since, by imposing a one per cent tax on gross receipts rather than on profits, it was arbitrary and unreasonably discriminatory. *State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization*, 145 M 380, 403 P 2d 635, distinguished in — M —, 505 P 2d 102, 107.

**Sec. 1a.****Income Tax**

The provisions of section 84-4905, before the 1955 amendment, relating to adjusted gross income, did not violate this section. *State ex rel. Anderson v. State Board of Equalization*, 133 M 8, 319 P 2d 221, 228.

This section does not impose an affirmative duty to replace property taxes entirely

with income taxes. *State v. Toomey*, 135 M 35, 335 P 2d 1051.

The mere fact that the income-tax law does not operate simultaneously upon the incomes of persons, firms, and corporations does not make it invalid. *State v. Toomey*, 135 M 35, 335 P 2d 1051.

**Sec. 1b.****Gasoline Tax Revenues**

Deposit of one per cent of gasoline tax revenues into state park fund as provided by statute did not violate antidiversion amendment of constitution in the absence of proof that legislative finding that not less than one per cent of all gasoline sold in state is consumed by motorboats is erroneous and in absence of proof that all motor fuel taxes resulting from use of vehicles on public highways are not expended on public highways. *Harvey v. Blewett*, 151 M 427, 443 P 2d 902.

**Proper Use of Funds**

Use, by state, of state highway trust funds derived essentially from motor vehicle license fees and gasoline taxes to pay assessment levied against property owned or leased by state highway commission and located within flood control and drainage district was proper and such use did not violate this section. *State Highway Commission v. West Great Falls Flood Control & Drainage Dist.*, 155 M 157, 468 P 2d 753.

**Sec. 2.****Corporate License Tax on Organization of Church Society**

The corporate license tax imposed under R. C. M. 1947, section 84-1501 et seq., on

the agricultural activities of a religious society formed for the purposes of farming, stock growing, and other branches of agriculture does not conflict with consti-

tutional provisions relating to religious freedom. *State v. King Colony Ranch*, 137 M 145, 350 P 2d 841.

### **Educational Purposes**

Religious education is exempt as an "educational purpose" and not as "actual religious worship" even though elements of the latter may be present and may serve to strengthen the exemption of all the property. *Flathead Lake Methodist Camp v. Webb*, 144 M 565, 399 P 2d 90.

The term "educational purposes," as used in this section and section 84-202, exempting property used exclusively for "educational purposes" from taxation, is not defined in terms of common scholastic institutions of grammar school, high school and university or college. Organizations for the social, intellectual, physical, or religious welfare of the children are exempt equally. *Flathead Lake Methodist Camp v. Webb*, 144 M 565, 399 P 2d 90.

### **"Exclusive Use" Defined**

The words "exclusive use" consistently have been held to mean the primary and inherent use and not the mere secondary or incidental uses of the property. *Flathead Lake Methodist Camp v. Webb*, 144 M 565, 399 P 2d 90.

### **Exemption of Church Camp**

Where church summer camp, containing twenty-two acres of land and twenty-eight improvements, was "used exclusively for educational purposes" within the meaning of this section and section 84-202, it was exempt from taxation. *Flathead Lake Methodist Camp v. Webb*, 144 M 565, 399 P 2d 90.

### **Extent of Exemption**

When exempting an institution of charity, sufficient residence and recreation area may also be exempt. *Flathead Lake Methodist Camp v. Webb*, 144 M 565, 399 P 2d 90.

## **Sec. 3.**

### **Adverse Possession**

One in actual possession of surface land, who owned it in fee simple and paid taxes upon it for over thirty years, could not acquire an undivided one-fourth mineral interest, reserved in a deed and thereby severed entirely from the land, by adverse possession, where the minerals were not and could not be assessed separately for taxation under this section. *Johnson v. Unknown Heirs*, 140 M 128, 368 P 2d 577, 581.

### **Annual Net Proceeds Tax**

"Average of annual net proceeds" as provided by section 84-5408, as amended

### **Home for Aged Persons**

Nonprofit foundation operating home for aged was entitled to tax exemption under statute granting a tax exemption to institutions of purely public charity, notwithstanding evidence that the foundation charged fees, imposed admission requirements and maintained a high standard of care, and notwithstanding argument that 1965 amendment to statute, specifically including homes for aged, was unlawful attempt by legislature to expand exemption allowed by constitution. *Bozeman Deaconess Foundation v. Ford*, 151 M 143, 439 P 2d 915, 37 ALR 3d 558.

### **Limits of Public Charity**

An institution of purely public charity, which is exempt from taxation under this section and section 84-202, may be devoted to bringing people under religious influence, the beneficiaries of the charity may pay a small portion of the cost, and the activity may be limited to a particular class so long as the numbers who may participate remain somewhat indefinite. *Flathead Lake Methodist Camp v. Webb*, 144 M 565, 399 P 2d 90.

### **Statutes Held Invalid under This Provision**

Chapter 153 of the session laws of Montana, 1961, which discriminatorily restrained the use of trading stamps or other redeemable devices in retail business by imposing an unreasonably high and prohibitive tax for nonpublic purpose, was unconstitutional under this section. *Garden Spot Market, Inc. v. Byrne*, 141 M 382, 378 P 2d 220.

### **Trust Property**

Provision under section 11-4108 for taxing property in which county or municipality has only a trust interest as opposed to a beneficial interest does not violate this section, since taxation of property is based on its use. *Fickes v. Missoula County*, 155 M 258, 470 P 2d 287.

in 1959, is not the same as the "annual net proceeds" provided by this section and therefore the law is unconstitutional. *State ex rel. Roberts v. State Board of Equalization*, 138 M 138, 355 P 2d 150, 152.

### **"Mining Claim"**

A "mining claim" is not restricted to a single mining location but may include as many locations as a miner can purchase, and the ground covered by all will constitute a mining claim. *United States Gypsum Co. v. Schreiner*, 135 M 312, 340 P 2d 548.



**Rights of Entry**

This section favors the exploration and development of minerals, and a right of entry to explore for and extract minerals created by conveyance from the

**Sec. 7.****"Owned or Used"**

Property in which county has trust interest, but corporation has the use, will be taxed to corporation and not be ex-

**Sec. 11.****Classification of Property**

Assessment of plaintiff's property based on "market value" rather than upon use of property for agricultural purposes did not violate this section since evidence showed that such property was located within commercial area and its market value far exceeded its value for agricultural purposes. *Mohland v. State Board of Equalization*, 155 M 49, 466 P 2d 582, certiorari denied, 400 US 940, 91 S Ct 232.

**Construction with Other Sections**

This section and section 1 of article XII of the Montana constitution must be construed together with section 15, which refers specifically to the state board of equalization. *Yellowstone Pipe Line Co. v. State Board of Equalization*, 138 M 603, 358 P 2d 55, 66.

**Discriminatory Enforcement**

State board of equalization could enforce statute providing for assessment of

**Sec. 12.****Laws Not Violating This Provision**

Statute amending initiative act providing for honorarium for World War II veterans so as to make Korean veterans

**Sec. 13.****Cross-References**

Printing defined, sec. 19-103.1.

**Sec. 14.****Cross-References**

Depository board continued, sec. 82A-209.

**Sec. 15.****Construction with Other Sections**

Sections 1 and 11, of article XII of the Montana constitution must be construed together with this section. *Yellowstone Pipe Line Co. v. State Board of Equalization*, 138 M 603, 358 P 2d 55, 66.

**Increased Valuation**

State board of equalization's directive to county officials requiring use of certain

owner of the fee is not taxable as a separate entity. *Cranston v. Musselshell County*, 156 M 288, 483 P 2d 289, distinguishing *Northern Pacific Ry. Co. v. Musselshell County*, 54 M 96, 169 P 53.

empted as county property under Montana constitution, article XII, section 2. *Fickes v. Missoula County*, 155 M 258, 470 P 2d 287.

property brought into state subsequent to regular assessment date as against trucks and used cars without also enforcing it against every other type of retail inventory and without violating uniformity requirement of constitution. *Hardin Auto Co. v. Alley*, 149 M 1, 422 P 2d 346.

**Public Contractors' Tax**

Section 84-3513 imposing a 1% gross receipts tax on public contractors does not violate this section since the classification of public contractors separately from private contractors is reasonable. *Peter Kiewit Sons' Co. v. State Board of Equalization*, — M —, 505 P 2d 102, distinguished in — M —, 507 P 2d 1040, 1045.

**References**

State ex rel. *Schultz-Lindsay Constr. Co. v. State Board of Equalization*, 145 M 380, 403 P 2d 635.

eligible to receive honorariums did not violate this section. *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 920.

valuations on grades of farm land for subsequent years, was enforceable by mandamus since the board had not only powers of adjustment, equalization and supervision over assessors under this section and section 84-708, but also the power to issue directives for those purposes. *State ex rel. State Board of Equalization v. Koch*, 145 M 474, 401 P 2d 765.

**Intervention of Court**

Court may not intervene where action of board is not arbitrary, fraudulent or contrary to law. *State ex rel. Reid v. District Court*, 134 M 128, 328 P 2d 634, 635.

**Powers of State Board of Equalization**

Board is charged with the duty of adjusting and equalizing the valuation of all taxable property among the several counties between individual taxpayers. *State ex rel. Reid v. District Court*, 134 M 128, 328 P 2d 634, 635.

The state board of equalization has the power to determine what a particular class should include. *Yellowstone Pipe Line Co. v. State Board of Equalization*, 138 M 603, 358 P 2d 55, 67.

Where the board held "show cause hearings" to afford opportunity to protest board's order of uniform county land value reclassification but provided no opportunity to cross-examine witnesses nor hear evidence and no stenographic record was kept of the proceedings, such hearings did not fulfill the requirements of due process and uniformity. *State ex rel. State Board of Equalization v. Kovich*, 142 M 201, 383 P 2d 818.

That an order of the state board of equalization prescribing a uniform method of appraising timberlands may not have been supported by the evidence adduced at a hearing does not give the counties ground for ignoring the order until such time as the order has been adjudicated

invalid by a court of competent jurisdiction. *State ex rel. Conrad v. Managhan*, 157 M 335, 485 P 2d 948.

**Uniformity of Taxation**

As long as the state board of equalization treats property of similar nature and productivity the same, it cannot be said that the constitutional mandate of uniformity is not subserved. *Yellowstone Pipe Line Co. v. State Board of Equalization*, 138 M 603, 358 P 2d 55, 67.

Under the Montana constitution the state board of equalization has the power, in adjusting and equalizing taxation between oil pipelines and other properties, i.e., town and city lots, to recognize pipelines as a class in itself, and still not violate the requirement of uniformity. *Yellowstone Pipe Line Co. v. State Board of Equalization*, 138 M 603, 358 P 2d 55, 67.

**Writ of Prohibition**

District court acted prematurely in issuing writ prohibiting state board of equalization from proceeding further under section 84-605, holding a public hearing and equalizing or increasing the assessed values of farm lands in county, which prevented board from discharging its constitutional duties. *State ex rel. Reid v. District Court*, 134 M 128, 328 P 2d 634, 635.

**References**

Cited in *Blair v. Potter*, 132 M 176, 315 P 2d 177, 182.

**Sec. 16.****Relocation of Utilities**

The provisions of former section 32-1625, relating to the costs of relocation

of utility facilities, do not violate this section. *Jones v. Burns*, 138 M 268, 357 P 2d 22, 33.

**ARTICLE XIII—PUBLIC INDEBTEDNESS****Sec. 1.****Industrial Development Revenue Bonds**

Provision for issuance of revenue bonds pursuant to Industrial Development Project Act (11-4101—11-4110) does not violate this section, since the credit in aid provided for in that act is for public purpose, despite the fact that certain individuals, associations or corporations may benefit from the legislation. *Fickes v. Missoula County*, 155 M 258, 470 P 2d 287.

**Laws Violating This Provision**

An appropriation to pay for secretarial services of two private veterans' organizations maintaining service offices in Fort Harrison, Montana, which were not under

the control of the state, was prohibited by this section even though the legislation was for a public purpose. *Veterans' Welfare Commission v. Department of Montana, Veterans of Foreign Wars*, 141 M 500, 379 P 2d 107.

**Relocation of Utilities**

The provisions of former section 32-1625, relating to the costs of relocation of utility facilities, do not violate this section. *Jones v. Burns*, 138 M 268, 357 P 2d 22, 34.

**Services to Indigents**

Payment of public funds to persons providing medical, hospitalization, and

foster home care to indigent mothers who have sought or received assistance from private rather than public adoptive agencies does not violate this section. *Montana State Welfare Board v. Lu-*

*theran Social Services of Montana*, 156 M 381, 480 P 2d 181.

#### References

*Wilson v. State Highway Commission*, 140 M 253, 370 P 2d 486, 487.

### Sec. 2.

#### "Debt or Liability"

Section 2, article IX of the Montana constitution amended the words "debt or liability" as they appear in this section and has effectively confined them to debts or liabilities which must be retired out of ad valorem taxes. *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 916, distinguished in — M —, 491 P 2d 868, 871.

Since the United States supreme court has held invalid limiting to taxpayers the right to vote on questions of debt or liability, there is no longer any reason to limit the words "debt or liability" as used in this section to debts to be retired out of ad valorem taxes. *State ex rel. Ward v. Anderson*, 158 M 279, 285, 491 P 2d 868, distinguishing *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907.

Issuance of bonds to be repaid from proceeds of income tax, corporation li-

cense tax, tobacco tax and gasoline tax would create a liability, if not a debt, within the meaning of this section, and the bonds must be approved by a vote of the people before they may be issued. *State ex rel. Ward v. Anderson*, 158 M 279, 285, 491 P 2d 868, distinguishing *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907.

#### Laws Not Violating This Provision

Statute amending initiative act providing for honorarium for World War II veterans so as to make Korean veterans eligible to receive honorariums was not required to be submitted to the voters under this section. *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 915, 916.

#### References

Cited in *Morgan v. Murray*, 134 M 92, 328 P 2d 644, 649.

### Sec. 5.

#### "Indebtedness or Liability"

County commissioners who over-levied a tax on the county taxpayers in order to provide a reserve fund greater than \$21,000 to finance capital improvements and remodeling of existing airport violated this section; county could not circumvent this section by arguing that the funds were already on hand and that hence they had not created an "indebtedness or liability" on the county. *Burlington Northern Inc. v. Flathead County*, 162 M 371, 512 P 2d 710, distinguished in — M —, 526 P 2d 999.

City-county airport commission which made two \$100,000 loans from the aeronautics commission without approval of either loan by the electorate and which was obligated to repay a total sum of \$238,500 over ten years had incurred a debt upon which an amount over \$10,000 was due each year in violation of this provision; resolution by airport commission which approved the loan and which

obligated county to repay only \$10,000 did not bring the debt within the constitutional limitation since the resolutions approving the loans made it clear that the county intended the loans to be a debt on the county treasury and that the county's budget was an integral part of the repayment schedule. *Burlington Northern, Inc. v. Richland County*, 162 M 364, 512 P 2d 707, distinguished in — M —, 526 P 2d 999.

#### Industrial Development Revenue Bonds

Industrial Development Project Act (11-4101—11-4110) does not violate this section, since it provides for revenue bonds and does not create debt or liability within the meaning of this section. *Fickes v. Missoula County*, 155 M 258, 470 P 2d 287.

#### References

*State ex rel. Keast v. Krieg*, 147 M 164, 410 P 2d 710.

**Sec. 6.** No city, town, township, school district or high school district shall be allowed to become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding five per centum (5%) of the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to



the incurring of such indebtedness, and all bonds or obligations in excess of such amount given by or on behalf of such city, town, township, school district or high school district shall be void; and each school district and each high school district shall have separate and independent bonding capacities within the limitation of this section; provided, however, that the legislative assembly may extend the limit mentioned in this section, by authorizing municipal corporations to submit the question to a vote of the taxpayers affected thereby, when such increase is necessary to construct a sewerage system or to procure a supply of water for such municipality which shall own and control said water supply and devote the revenues derived therefrom to the payment of the debt.

#### Compiler's Note

This constitutes sec. 6 of article XIII as amended by act approved March 7, 1957 (Ch. 161, Laws of 1957), adopted at the general election of November 1958, effective under governor's proclamation, December 8, 1958. This amendment inserted the words "high school district" each time they appear and inserted the phrase "and each school district and each high school district shall have separate and independent bonding capacities within the limitation of this section."

#### Combined Bond Issue

Bonds issued pursuant to a plan authorizing high school district and common school district included therein to build grade school and high school in one

compact unit sharing common facilities was not an attempt to circumvent debt limits imposed on the districts by the constitution. *Long v. School District No. 44*, 149 M 220, 425 P 2d 822.

#### Lease Payments

Under resolution providing that city would convey title to properties to party who would cause to be built on one property a city approved building which the city would rent for an annual rental for a period of three years with option in the city to purchase property together with the building thereon, lease payments were forms of indebtedness within the meaning of this section. *State ex rel. Simmons v. City of Missoula*, 144 M 210, 395 P 2d 249, 251.

### ARTICLE XV—CORPORATIONS OTHER THAN MUNICIPAL

#### Sec. 4.

##### Operation and Effect

A corporation may not deprive a stockholder of the right of cumulative voting by any act on its part. *Sensabaugh v. Polson Plywood Co.*, 135 M 562, 342 P 2d 1064.

Stockholders may contract among themselves with respect to voting their stock

and a contract to refrain from cumulative voting is valid. However, an invalid bylaw, attempting to dispense with cumulative voting, was not enforceable as a contract, even among those stockholders assenting to it. *Sensabaugh v. Polson Plywood Co.*, 135 M 562, 342 P 2d 1064.

#### Sec. 9.

##### Acts Not Violating This Provision

The requirements of subsection 9 of section 11-602, since repealed, that a portion of platted subdivisions be dedicated to public park purposes is not an unconstitutional delegation of legislative authority to city and county authorities, nor is the enforcement of these requirements a confiscation of private property without compensation or an invalid extension of the police power. *Billings Properties, Inc. v. Yellowstone County*, 144 M 25, 394 P 2d 182.

##### Operation and Effect

Under the guise of police power the state and municipal subdivisions thereof have the power and the duty to do all things necessary to protect the public in matters of the preservation, among other things of the health and well being of the community. *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29, 30.

Under police power the state can provide for the destruction of diseased animals even though provision for compensation to the owner has not been made. *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29, 31.

**Sec. 13.****Lease of State Lands**

The law authorizing the lease of state lands for underground storage of natural gas does not violate this section. *State ex rel. Hughes v. State Board of Land Commrs.*, 137 M 510, 353 P 2d 331, 336.

**References**

*State ex rel. Johnson v. District Court of Fourth Judicial District*, 148 M 22, 417 P 2d 109, 112.

**Sec. 20.****Fair Trade Act**

The Fair Trade Act (now repealed) permitted price-fixing in violation of this section and was therefore invalid. *Union Carbide & Carbon Corp. v. Skaggs Drug Center, Inc.*, 139 M 15, 359 P 2d 644, distinguished in 141 M 149, 159, 376 P 2d 508.

**Operation and Effect**

The activity proscribed by this section has no relation to police power. *Montana Milk Control Board v. Rehberg*, 141 M 149, 376 P 2d 508, 514.

**Price-Fixing**

This section is not only aimed at monopolies but also invalidates all price-fixing contracts, even in situations where there is open competition and no danger of monopoly. *Union Carbide & Carbon Corp. v. Skaggs Drug Center, Inc.*, 139 M 15, 359 P 2d 644.

**References**

Cited in *Professional & Business Men's Life Ins. Co. v. Bankers Life Co.*, 163 F Supp 274, 279; *McNussen v. Graybeal*, 146 M 173, 405 P 2d 447.

**ARTICLE XVI—COUNTIES—MUNICIPAL CORPORATIONS AND OFFICES****Sec. 5.****References**

*Husky Hi Power, Inc. v. Schmidt*, 140 M 353, 372 P 2d 142, 144.

**Sec. 7.****City-County Government**

A city-county planning board established without reference to the electors

was in violation of this section. *Plath v. Hi-Ball Contractors, Inc.*, 139 M 263, 362 P 2d 1021, 1025.

**ARTICLE XVII—PUBLIC LANDS****Sec. 1.****Leasing for Underground Storage**

The law authorizing the lease of state lands for underground storage of natural gas does not violate this section. *State ex rel. Hughes v. State Board of Land Commrs.*, 137 M 510, 353 P 2d 331, 335.

**Market Value**

The test of "willing buyer-willing seller" has little applicability in awarding a lease to farm land by the state. A more appropriate test is the value of similar

leases in the particular community, coupled with the applicant's ability as a farmer and other variables to be considered by the state in securing as large a return as possible on the land, while preserving its productive capacity. *State ex rel. Thompson v. Babcock*, 147 M 46, 409 P 2d 808.

**References**

*State ex rel. Werner v. District Court*, 142 M 145, 382 P 2d 824.

**Sec. 2.****References**

*State ex rel. Werner v. District Court*, 142 M 145, 382 P 2d 824.

### Sec. 3.

#### References

State ex rel. Werner v. District Court,  
142 M 145, 382 P 2d 824.

## ARTICLE XVIII—LABOR

### Sec. 1.

#### Cross-References

Commissioner continued as head of department, sec. 82A-1001.

Commissioner of agriculture continued as head of department, sec. 82A-301.

## ARTICLE XIX—MISCELLANEOUS SUBJECTS AND FUTURE AMENDMENTS

### Sec. 2.

#### Initiative Measure Unconstitutional

Proposed initiative measure no. 63 which would legalize lotteries and repeal sections 94-3001 to 94-3011 is unconstitutional. State ex rel. Steen v. Murray, 144 M 61, 394 P 2d 761, 763.

#### Operation and Effect

The framers of the constitution were seeking to suppress and restrain the spirit of gambling which is cultivated and stimulated by schemes whereby one is induced to hazard his earnings with the hope of large winnings. The statutes which define and prohibit lotteries must therefore be interpreted with this purpose in mind. State v. Cox, 136 M 507, 349 P 2d 104, 106.

The provisions of this section are both mandatory and prohibitory. State ex rel. Steen v. Murray, 144 M 61, 394 P 2d 761, 763.

#### Valuable Consideration

Where one is required to make an outlay of money in order to participate in a scheme whereby an award is made by chance, the participant pays valuable consideration for the chance to participate, notwithstanding the fact he may also receive merchandise at the same time that the outlay is made. State v. Cox, 136 M 507, 349 P 2d 104. (State ex rel. Stafford v. Fox-Great Falls Theatre Corp., 114 M 52, 132 P 2d 689, distinguished.)

### Sec. 4.

#### Overtime Computation

This section required that forty-hour work week be used to determine the regular hourly rate for computation of overtime pay for state employees who worked on twenty-four hour per day basis, five days per week. Glick v. State, by and through Montana Dept. of Institutions, 162 M 82, 509 P 2d 1, 5, certiorari denied, 414 US 856, 38 L Ed 2d 106, 94 S Ct 158.

#### Waiver of Exemption

This section establishes public policy in favor of liberal exemption laws, and the enforcement of a clause in an executory contract waiving statutory exemptions is against public policy, even without a statute expressly invalidating such waivers. Anaconda Federal Credit Union, # 4401 v. West, 157 M 175, 483 P 2d 909.

### Sec. 8.

#### Delegates to Convention

Legislators and other officers of the state are ineligible to serve as delegates to a constitutional convention during their term of office. Forty-Second Legislative Assembly v. Lennon, 156 M 416, 481 P 2d 330, distinguished in 159 M 176, 185, 496 P 2d 1120, 1125.

Delegates to the constitutional convention must be elected in the same manner as legislators, including the provisions for partisan elections. Forty-Second Legislative Assembly v. Lennon, 156 M 416, 481 P 2d 330.

Delegates to the constitutional convention must be elected from districts apportioned according to the 1970 census and to be used for the election of legislators in 1972. Forty-Second Legislative Assembly v. Lennon, 156 M 416, 481 P 2d 330.

#### Initiative Measure

Proposed initiative measure no. 63, which would legalize lotteries and repeal sections 94-3001 to 94-3011, could not be considered as an amendment to the Montana constitution where it did not comply with this section or section 9, article XIX.



State ex rel. Steen v. Murray, 144 M 61, 394 P 2d 761, 764.

rel. Cashmore v. Anderson, 160 M 175, 500 P 2d 921, certiorari denied 410 US 931.

#### Majority of Electors

"Approval by a majority of the electors voting at the election" means approval by a majority of a total number of electors casting valid ballots on the question of approval or rejection of a new constitution, and does not refer to or include those electors who fail to express an opinion by a vote on that issue. State ex

#### Voter Education

This section does not grant to a constitutional convention the power to expend public funds for voter education with respect to the convention's proposals. State ex rel. Kvaalen v. Graybill, 159 M 190, 496 P 2d 1127.

Sec. 9. Amendments to this constitution may be proposed in either house of the legislative assembly, and if the same shall be voted for by two-thirds of the members elected to each house, such proposed amendments, together with the ayes and nays of each house thereon, shall be entered in full on their respective journals; and the secretary of state shall cause the said amendment or amendments to be published in full in at least one newspaper in each county (if such there be) for three months previous to the next general election for members to the legislative assembly; and at said election the said amendment or amendments shall be submitted to the qualified electors of the state for their approval or rejection and such as are approved by a majority of those voting thereon shall become part of the constitution. Should more amendments than one (1) be submitted at the same election, they shall be so prepared and distinguished by numbers or otherwise that each can be voted upon separately. Not more than three amendments to this constitution shall be submitted at the same election, except that there may be submitted at each of the general elections held in the years 1972, 1974 and 1976, in addition to the three amendments otherwise authorized by this section, an amendment or amendments providing for the reorganization of the executive department of government which may include the revision or repeal of sections of this constitution relating to any boards, offices, and departments other than legislative and judicial offices. The reorganization of the executive department is a single subject, and an additional amendment relating to that subject authorized by this section may be submitted to the qualified electors of the state in the form of a title clearly expressing its subject.

#### Compiler's Notes

This constitutes sec. 9 of article XIX as amended by act approved February 21, 1969 (Ch. 66, Laws 1969), adopted at the general election of November 3, 1970, and effective under the governor's proclamation of November 20, 1970. The amendment added to the next to last sentence the exceptions applicable to the elections of 1972, 1974 and 1976, and it added the last sentence to the section.

#### Cross-Reference

Explanatory statement of proposed Constitutional amendments to be prepared by attorney general, sec. 37-104.1.

#### Initiative Measure

Proposed initiative measure no. 63,

which would legalize lotteries and repeal sections 94-3001 to 94-3011, being unconstitutional, could not be considered as an amendment to the Montana constitution where it did not comply with this section or section 8, article XIX. State ex rel. Steen v. Murray, 144 M 61, 394 P 2d 761, 764.

#### Presentation to Governor

It was a fatal defect for the legislature to ignore the governor, in neglecting and refusing to present proposed constitutional amendments to the governor in full as passed by the house and senate for the governor's approval or disapproval. State ex rel. Livingstone v. Murray, 137 M 557, 354 P 2d 552, 556.

ARTICLE XXI—MONTANA TRUST AND LEGACY FUND

Sec. 1.

References

In re Montana Trust and Legacy Fund,  
143 M 218, 388 P 2d 366.

Sec. 6.

References

In re Montana Trust and Legacy Fund,  
143 M 218, 388 P 2d 366.

Sec. 7.

References

In re Montana Trust and Legacy Fund,  
143 M 218, 388 P 2d 366.

Sec. 8.

Bonds Fully Guaranteed

The phrase "bonds fully guaranteed by the United States" in this section means "instruments in writing constituting a promise to pay a sum certain, with interest at a definite rate, to a holder or bearer by a defined future date, which are fully guaranteed at 100% of their face

value as substantiated by a written opinion of the federal government," and includes all securities meeting that definition even though they may be called debentures, certificates, notes, bills or by other terms. In re Montana Trust & Legacy Fund, 158 M 121, 489 P 2d 612.

Sec. 17.

Sale of Securities

The securities which constitute these funds may be sold before maturity for the benefit of the funds and the state institutions for which they were created, and

may even be sold for less than face value provided that the sale price is not less than the purchase price. In re Montana Trust and Legacy Fund, 143 M 218, 388 P 2d 366.

ORDINANCE NO. I—FEDERAL RELATIONS

Disclaimer as to Indian Population

The disclaimer provision is not applicable where the issue does not concern Indian lands. State ex rel. Iron Bear v. District Court, Fifteenth Judicial Dist., Roosevelt County, — M —, 512 P 2d 1292.

Operation and Effect

Neither a constitutional amendment nor a referendum was required, but a legis-

lative act was sufficient on behalf of the people to assume jurisdiction of crimes by or against Indians committed in Indian country, pursuant to federal statute reserving to Congress power to resume federal jurisdiction by repeal of the statute. State ex rel. McDonald v. District Court, 159 M 156, 496 P 2d 78.

**THE  
CONSTITUTION  
OF THE  
STATE OF MONTANA**

AS ADOPTED BY THE CONSTITUTIONAL CONVENTION  
MARCH 22, 1972 AND RATIFIED BY THE PEOPLE, JUNE 6, 1972

Preamble

Article

- I. Compact with the United States
- II. Declaration of Rights
- III. General Government
- IV. Suffrage and Elections
- V. The Legislature
- VI. The Executive
- VII. The Judiciary
- VIII. Revenue and Finance
- IX. Environment and Natural Resources
- X. Education and Public Lands
- XI. Local Government
- XII. Departments and Institutions
- XIII. General Provisions
- XIV. Constitutional Revision

Transition Schedule

**HISTORICAL NOTE**

Chapter 65, Laws of 1969, submitted to the electors a question as to whether a constitutional convention should be called in accordance with section 8, Article XIX of the 1889 Constitution "to revise, alter, or amend" the Constitution. At the general election of November 3, 1970, the electors approved the calling of a constitutional convention by a vote of 133,482 for the convention and 71,643 against.

Pursuant to the mandate of section 8, Article XIX of the 1889 Constitution, the Forty-second Legislative Assembly, by Chapter 296, Laws of 1971, provided for the selection of delegates and for the convening of a constitutional convention. Chapter 296 was amended in some respects by Chapter 1, 1st Extraordinary Session, Laws of 1971.

Delegates to the constitutional convention were nominated on September 14, 1971 and elected on November 2, 1971. Delegates were elected in the same manner and from the same districts as members of the house of representatives, based on section 43-106.7.

After an organizational session on November 29, 1971, the constitutional convention convened in plenary session on January 17, 1972. On March 22, 1972, the convention adopted an entirely new constitution, then adjourned sine die on March 24, 1972.

The proposed constitution was submitted to the electors in a special election of June 6, 1972. The result, as certified by the secretary of state, was 116,415 votes for the new constitution and 113,883 against.

Three alternate propositions were separately submitted to the electors on June 6, 1972. The first would have restated Article V of the new constitution so as to create a unicameral rather than a bicameral legislature. This proposition was defeated with a vote of 95,259 for a unicameral legislature and 122,425 for a bicameral legislature.



A second proposition separately submitted reworded section 9, Article III of the new constitution so as to permit the people or the legislature to authorize gambling. This proposition carried with a vote of 139,382 for and 88,743 against gambling.

The third proposition separately submitted would have added to section 28, Article II of the new constitution a sentence abolishing capital punishment. This proposition was defeated with a vote of 147,023 for the death penalty and 77,733 against.

After the election of June 6, 1972, a question arose as to whether the new constitution had been approved by "a majority of the electors voting at the election," as required by section 8, Article XIX of the 1889 Constitution. An original proceeding for declaratory judgment was brought in the Montana supreme court to determine this question. On August 18, 1972, the supreme court held in a three-to-two decision that the new constitution had been approved by the required majority of the electors and would become effective according to its terms. *State ex rel. Cashmore v. Anderson*, 160 M 175, 500 P 2d 921. Rehearing was denied on September 25, 1972.\*

A petition to the United States Supreme Court for a writ of certiorari to the Supreme Court of Montana was denied without comment by an order entered February 20, 1973, sub nom., *Burger v. Anderson*, 410 US 931, 93 S Ct 1372. Thereafter an action for declaratory judgment was filed in the United States District Court for the District of Montana, which action sought a declaration that the adoption of the new constitution was in violation of the Fourteenth Amendment of the U.S. Constitution, Article IV, section 4 of the U.S. Constitution and the Voting Rights Act of 1965 (42 U.S.C. 1973). Plaintiffs alleged that they had been misled so as to have believed at the time of the election that an elector's failure to vote on the issue of adoption of the new constitution was to have constituted a vote against adoption if the elector participated in the election by voting on other issues on the ballot. The federal district court, sitting as a three-judge panel, dismissed the plaintiff's petition and held that the electors were neither deprived of their right to vote nor subjected to a debasement or dilution of their votes as a result of their mistaken understanding of the effect of not voting on the adoption of the new constitution. *Burger v. Judge*, 364 F Supp 504, affirmed on December 3, 1973, in 414 US 1058, 38 L Ed 2d 465, 94 S Ct 563.

## PREAMBLE

We the people of Montana grateful to God for the quiet beauty of our state, the grandeur of our mountains, the vastness of our rolling plains, and desiring to improve the quality of life, equality of opportunity and to secure the blessings of liberty for this and future generations do ordain and establish this constitution.

### Convention Notes

Preamble is new. The old Preamble is deleted.

sions in the 1889 Constitution, see annotations following the Preamble of the 1889 Constitution in bound Volume One, Part I.

### Decisions under Former Provisions

For decisions relating to similar provi-

## ARTICLE I

### COMPACT WITH THE UNITED STATES

All provisions of the enabling act of Congress (approved February 22, 1889, 25 Stat. 676), as amended and of Ordinance No. 1, appended to the Constitution of the state of Montana and approved February 22, 1889, including the agreement and declaration that all lands owned or held by any Indian or Indian tribes shall remain under the absolute jurisdiction and control of the congress of the United States, continue in full force and effect until revoked by the consent of the United States and the people of Montana.

### Convention Notes

Makes it clear that the new constitution does not affect any agreements made with

the United States Government when Montana first became a state.

**Jurisdiction of State Court Over Indian Land**

The Crow Indian Allotment Act of June 4, 1920, 41 Stat. 75, does not divest state courts of subject matter jurisdiction over Indian land transfers otherwise exercisable under the General Allotment Act of February 8, 1887, 25 U.S.C., §§ 348, 349; therefore, court had jurisdiction over deed

cancellation proceeding between Crow Indian and non-Indian. *Woodtick v. Crosby*, — M —, 544 P 2d 812.

**Decisions under Former Provisions**

For decisions relating to Ordinance No. 1 appended to the 1889 Constitution, see pages 328 to 330 in bound Volume One, Part 1.

## ARTICLE II

### DECLARATION OF RIGHTS

**Section**

1. Popular sovereignty.
2. Self-government.
3. Inalienable rights.
4. Individual dignity.
5. Freedom of religion.
6. Freedom of assembly.
7. Freedom of speech, expression, and press.
8. Right of participation.
9. Right to know.
10. Right of privacy.
11. Searches and seizures.
12. Right to bear arms.
13. Right of suffrage.
14. Adult rights.
15. Rights of persons not adults.
16. The administration of justice.
17. Due process of law.
18. State subject to suit.
19. Habeas corpus.
20. Initiation of proceedings.
21. Bail.
22. Excessive sanctions.
23. Detention.
24. Rights of the accused.
25. Self-incrimination and double jeopardy.
26. Trial by jury.
27. Imprisonment for debt.
28. Rights of the convicted.
29. Eminent domain.
30. Treason and descent of estates.
31. Ex post facto, obligation of contracts, and irrevocable privileges.
32. Civilian control of the military.
33. Importation of armed persons.
34. Unenumerated rights.
35. Servicemen, servicewomen, and veterans.

**Section 1. Popular sovereignty.** All political power is vested in and derived from the people. All government of right originates with the people, is founded upon their will only, and is instituted solely for the good of the whole.

**Convention Notes**

Identical to 1889 Constitution [Art. III, sec. 1]. Expresses the philosophy that government is founded on the will of the people and is for their good.

**Decisions under Former Provisions**

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 1, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

**Section 2. Self-government.** The people have the exclusive right of governing themselves as a free, sovereign, and independent state. They

may alter or abolish the constitution and form of government whenever they deem it necessary.

**Convention Notes**

No change except in grammar [Art. III, sec. 2]. Gives Montanans the right to govern themselves and to determine their form of government.

**Decisions under Former Provisions**

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 2, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

**Section 3. Inalienable rights.** All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities.

**Compiler's Notes**

Section 3 of the Transition Schedule provides that "rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive."

The last sentence is also new and provides that in accepting rights people have obligations.

**Decisions under Former Provisions**

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 3, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

**Convention Notes**

Revises 1889 constitution [Art. III, sec. 3] by adding three rights, relating to environment, basic necessities, and health.

**Section 4. Individual dignity.** The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.

**Compiler's Notes**

Section 3 of the Transition Schedule provides that "rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive."

sovereign status of the tribe under federal law. *Fisher v. District Court*, — US —, — L Ed 2d —, 96 S Ct 943, reversing *State ex rel. Adoption of Firecrow v. District Court*, — M —, 536 P 2d 190.

**Convention Notes**

New provision prohibiting public and private discrimination in civil and political rights.

**Attorney's Fees**

Allowance of attorney's fees to successful plaintiffs, but not to successful insurers, under the workmen's compensation law, does not deny to the insurers equal protection of the law, since it is reasonable to impose the burden of attorney's fees upon the party whose refusal to pay a just claim renders the litigation necessary. *McMillen v. Arthur G. McKee & Co.*, — M —, 533 P 2d 1095.

**Cross-References**

Freedom from discrimination as civil right, sec. 64-301 et seq.  
Nondiscrimination in education, 1972 Const. Art. X, sec. 7.

**Jury Selection**

**Access to State Courts**

Where action arises on a reservation and all parties are Indians so that exclusive jurisdiction is vested in the tribal court, denying the parties access to state courts does not constitute impermissible racial discrimination because the tribal court jurisdiction derives from the quasi-

Where members of jury were selected from property tax rolls and this list comprised 80% of population in that county, it reasonably reflected cross section of population, and there was no denial of impartial jury. *State v. Taylor*, — M —, 542 P 2d 100.



**Property Tax Appraisal**

Implementation of disproportionate appraisal made by county-hired private firm and employing unlawful appraisal method would have denied equal protection to taxpayers who would have been adversely affected thereby. *Larson v. State*, — M —, 534 P 2d 854.

**Prospective Application**

In action to modify a divorce decree entered before the effective date of this constitution, husband could not attack an award of alimony on the ground that it violated this section; by virtue of section 3 of the Transition Schedule, the rights created by this section apply prospectively only and do not serve to invalidate the award if it was proper when made. *Rogers v. Rogers*, — M —, 548 P 2d 141.

**Sex-based Distinctions**

Language in statute prohibiting sexual intercourse without consent was not invalid under this section because its prohibition applied only to a "male person" who committed the offense against a "female"; classification reflected experience that most perpetrators of the offense in

question are male and most victims female, therefore it was reasonable. *State v. Craig*, — M —, 545 P 2d 649.

**Testamentary Capacity of Married Women**

Where wills statute prohibited married woman from bequeathing more than two-thirds of her real estate to persons other than her husband without his written consent, it had to be read in conjunction with dower and elective share statutes which impose reciprocal restrictions on married men, and when so read did not constitute a violation of this section. *Matter of Estate of Kujath*, — M —, 545 P 2d 662.

**Voluntary Sterilization**

Action of defendant Catholic hospital in forbidding the use of its facilities for voluntary sterilization was merely private conduct, and not state action, even though the general public had contributed to the hospital funds, the hospital was regulated by state, hospital was allowed tax exempt status, and it occupied a monopoly position in the area where it was located. *Ham v. Holy Mary Hospital*, — M —, 529 P 2d 361.

**Section 5. Freedom of religion.** The state shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.

**Convention Notes**

Revises 1889 constitution [Art. III, sec. 4] by using wording of the U.S. constitution to guarantee free exercise of religion and prohibit the state from establishing a religion.

**Cross-References**

Schools not to instruct in sectarian doctrine, sec. 75-7521.

**Section 6. Freedom of assembly.** The people shall have the right peaceably to assemble, petition for redress or peaceably protest governmental action.

**Convention Notes**

No change except in grammar [Art. III, sec. 26]. Retains basic rights to assemble and to petition or protest for redress of grievances.

**Section 7. Freedom of speech, expression, and press.** No law shall be passed impairing the freedom of speech or expression. Every person shall be free to speak or publish whatever he will on any subject, being responsible for all abuse of that liberty. In all suits and prosecutions for libel or slander the truth thereof may be given in evidence; and the jury, under the direction of the court, shall determine the law and the facts.

**Compiler's Notes**

Section 3 of the Transition Schedule provides that "rights, procedural or sub-

**Decisions under Former Provisions**

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 4, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

**Decisions under Former Provisions**

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 26, Art. III of the 1889 Constitution in bound Volume One, Part 1.

stantive, created for the first time by Article II shall be prospective and not retroactive."

#### Convention Notes

Revises 1889 constitution [Art. III, sec. 10] by enlarging a citizen's freedom to express himself and allowing the truth to be given in evidence in slander as well as libel cases.

#### Cross-References

Criminal libel, sec. 94-2801 et seq.; new Criminal Code, sec. 94-8-111.

Defamation, libel and slander defined, sec. 64-202 et seq.

Political criminal libel, sec. 94-1454 redesignated 23-4754.

#### Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 10, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

**Section 8. Right of participation.** The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.

#### Compiler's Notes

Section 3 of the Transition Schedule provides that "rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive."

#### Convention Notes

New provision creating a right of the people to participate in the decision making process of state and local government.

#### Public Utility Hearing

Where public service commission gave notice of hearing on electric company's application for increased prices to offset increases in its cost, by sending news releases to radio, television and newspapers, and where consumer counsel participated in all proceedings throughout, public was afforded reasonable opportunity to participate prior to final decision of commission. *Montana Consumer Counsel v. Public Service Commission*, — M —, 541 P 2d 770.

**Section 9. Right to know.** No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

#### Compiler's Notes

Section 3 of the Transition Schedule provides that "rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive."

#### Convention Notes

New provision that government documents and operations be open to public scrutiny except when the right to know is outweighed by the right to individual privacy.

#### Public Utilities

Where public service commission gave notice of hearing on electric company's application for increased prices to offset increases in its cost, by sending news releases to radio, television and newspapers, and where consumer counsel participated in all proceedings throughout, no person was deprived of right to examine documents or observe deliberations. *Montana Consumer Counsel v. Public Service Commission*, — M —, 541 P 2d 770.

**Section 10. Right of privacy.** The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

#### Compiler's Notes

Section 3 of the Transition Schedule provides that "rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive."

#### Convention Notes

New provision prohibiting any invasion of privacy unless the good of the state makes it necessary.

**Suppression of Evidence**

Exclusionary rule of evidence must apply to all searches and seizures, especially where there is also violation of defendant's protection against self-incrimination, and thus motion to suppress was properly

granted where employer removed marijuana from defendant's coat in an unconstitutional invasion of defendant's privacy. *State v. Coburn*, — M —, 530 P 2d 442.

**Section 11. Searches and seizures.** The people shall be secure in their persons, papers, homes and effects from unreasonable searches and seizures. No warrant to search any place, or seize any person or thing shall issue without describing the place to be searched or the person or thing to be seized, or without probable cause, supported by oath or affirmation reduced to writing.

**Convention Notes**

Identical to 1889 constitution [Art. III, sec. 7].

**Cross-References**

Motion to suppress evidence illegally seized, sec. 95-1806.

Search and seizure, procedural requirements, sec. 95-701 et seq.

**Decisions under Former Provisions**

For decisions relating to identical provisions in the 1889 Constitution, see annotations following sec. 7, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

**Invalid Search Warrant**

The action of a police officer proceeding on the basis of his reasonable, good faith understanding of the law cannot be tortious, and where the sheriff has made an arrest pursuant to evidence discovered under authority of a search warrant that was valid on its face, the arrested person cannot recover for false arrest or imprisonment, even though the search warrant is later declared to be invalid by the court. *Strung v. Anderson*, — M —, 529 P 2d 1380.

**Probable Cause**

Where a police officer stopped defendant for speeding and saw several CB radios and a stereo tape player, along with tools which could have been used to remove them from other vehicles, in the passenger compartment of defendant's car, leading the officer to suspect that defendant might have stolen the articles, there was no probable cause for a search of trunk, and no search warrant authorizing such a search could properly have issued. *State v. Brough*, — M —, 556 P 2d 1239.

**Search and Seizure by Private Citizen**

Court properly suppressed evidence of marijuana, seized by defendant's employer from defendant's coat and taken to police, since a private individual acting in co-operation with the police is deemed to be

acting as an agent of the state. *State v. Coburn*, — M —, 530 P 2d 442.

**Search Without Warrant**

Although reasonable search without warrant is permitted incident to a lawful arrest, such search cannot be used to establish the probable cause to justify the arrest. *State v. Fetters*, — M —, 526 P 2d 122.

Police officers who arrested a parolee upon a valid warrant for violation of his parole had probable cause to search his apartment after seeing two televisions and a tape player in plain view at the time they made the arrest. *State v. Peters*, — M —, 526 P 2d 353.

Officers, who observed defendant's place of employment through binoculars, and observed other drug users come and go, and observed defendant taking a baggie out of his car and passing it around, had probable cause to arrest defendant and make a search of his person without a warrant. *State v. Stewart*, — M —, 526 P 2d 1380.

**Voluntary Consent to Search**

Defendant's consent to the search of his car was voluntary where defendant had previously been arrested and knew his rights, had told officers that the car was full of marijuana, and knew that a search warrant would be issued, even though consent was obtained after he had spent the night in jail and was still in custody. *State ex rel. Kotwicki v. District Court*, — M —, 532 P 2d 694.

Where defendant was arrested on a reckless driving charge which was subsequently reduced to careless driving, was not allowed to post bond nor make a telephone call, was told that he would be held in jail until he consented to a search of his car, and was told that if he did not consent a search warrant would be obtained and the car searched anyway, his reluctant consent was invalid because coerced. *State v. Brough*, — M —, 556 P 2d 1239.



### What Constitutes Search

In order for a search to occur, the police officer must intend to find something; a

discovery of evidence is not a search absent such intent. *State v. Emerson*, — M —, 546 P 2d 509.

**Section 12. Right to bear arms.** The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons.

### Convention Notes

Identical to 1889 constitution [Art. III, sec. 13].

### Decisions under Former Provisions

For decisions relating to identical provisions in the 1889 Constitution, see annotations following sec. 13, Art. III of the 1889 Constitution in bound Volume One, Part 1.

**Section 13. Right of suffrage.** All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

### Convention Notes

Identical to 1889 constitution [Art. III, sec. 5].

### Decisions under Former Provisions

For decisions relating to identical provisions in the 1889 Constitution, see annotations following sec. 5, Art. III of the 1889 Constitution in bound Volume One, Part 1.

**Section 14. Adult rights.** A person 18 years of age or older is an adult for all purposes.

### Proposed Amendment

Chapter 459, Laws of 1977, proposes to amend this section to read as follows: "A person 18 years of age or older is an adult for all purposes, except that the legislature or the people by initiative may establish an age of not more than 19 as the legal age for consuming or possessing alcoholic beverages."

The proposed amendment is to be submitted to the electors of the State of Montana at the General Election to be held November 7, 1978 and, if approved by the electorate, the amendment shall be effective January 1, 1979.

### Compiler's Notes

Section 3 of the Transition Schedule provides that "rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive."

### Convention Notes

New provision. Self explanatory.

### Cross-References

Minors and adults defined, sec. 64-101.

**Section 15. Rights of persons not adults.** The rights of persons under 18 years of age shall include, but not be limited to, all the fundamental rights of this Article unless specifically precluded by laws which enhance the protection of such persons.

### Compiler's Notes

Section 3 of the Transition Schedule provides that "rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive."

### Convention Notes

New provision giving children all of the rights that adults have unless a law meant to protect children prohibits their enjoyment of the right.

**Section 16. The administration of justice.** Courts of justice shall be open to every person, and speedy remedy afforded for every injury of person, property, or character. No person shall be deprived of this full

legal redress for injury incurred in employment for which another person may be liable except as to fellow employees and his immediate employer who hired him if such immediate employer provides coverage under the Workmen's Compensation Laws of this state. Right and justice shall be administered without sale, denial, or delay.

#### Compiler's Notes

Section 3 of the Transition Schedule provides that "rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive."

#### Convention Notes

Adds to 1889 constitution [Art. III, sec. 6] by specifically granting to a person injured in employment the right to sue a third party causing the injury, except his employer or fellow employee when his employer provides coverage under workmen's compensation laws.

#### Cross-References

Injured workman's action against third party, sec. 92-204.1.

#### Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see an-

notations following sec. 6, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

#### Indian Plaintiff

Montana court had jurisdiction over action for wrongful death brought by Indian plaintiff against a non-Indian as a result of an automobile accident within the boundaries of the reservation since all persons are given free access to Montana courts and equal protection of its laws. *McCrea v. Busch*, — M —, 524 P 2d 781.

#### Prospective Application

Right of injured workman to seek redress against statutory employer (prime contractor) was effective prospectively from the effective date of the constitution (July 1, 1973), and thus complaint that was filed three months before the effective date was dismissed. *Poulson v. Walsh-Groves*, — M —, 531 P 2d 1335.

**Section 17. Due process of law.** No person shall be deprived of life, liberty, or property without due process of law.

#### Convention Notes

Identical to 1889 constitution [Art. III, sec. 27].

#### Decisions under Former Provisions

For decisions relating to identical provisions in the 1889 Constitution, see annotations following sec. 27, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

#### Production of Evidence

Failure by prosecution to produce physical evidence pursuant to an order under section 95-1803 to do so, due to its negligent loss, misplacement or destruction was not shown to be a denial of due process rendering a subsequent conviction invalid where accused did not prove evidence was vital to his defense. *State v. Craig*, — M —, 545 P 2d 649.

#### Public Utilities

Where public service commission gave notice of hearing on electric company's application for increased prices to offset increases in its cost, by sending news releases to radio, television and newspapers, and where consumer counsel participated in all proceedings throughout, public was afforded reasonable opportunity to participate prior to final decision of commission; no person was deprived of right to examine

documents or observe deliberations; and no person was deprived of property without due process of law. *Montana Consumer Counsel v. Public Service Commission*, — M —, 541 P 2d 770.

#### Revocation of Probation or Suspended Sentence

Hearing on revocation of probation, which was held prior to trial for criminal charge on same facts alleged as grounds for revocation, was not a violation of defendant's right to due process of law. *State v. Ryan*, — M —, 533 P 2d 1076.

There is no constitutional requirement for a preliminary hearing prior to revocation of probation or suspended sentence, but all that is required of such a hearing is fundamental fairness. *Petition of Meidinger*, — M —, 539 P 2d 1185.

#### School Foundation Program

Provisions of ch. 355, Laws 1973 requiring that tax proceeds in excess of those needed by a particular county be remitted to the state did not result in a taking of property without due process since tax was a state tax rather than a local tax and the state as a whole benefited from the tax. *State ex rel. Woodahl v. Straub*, 164 M 141, 520 P 2d 776, certiorari denied, 419 US 845, 42 L Ed 2d 73, 95 S Ct 79.

**Section 18. State subject to suit.** The state, counties, cities, towns, and all other local governmental entities shall have no immunity from suit for injury to a person or property, except as may be specifically provided by law by a  $\frac{2}{3}$  vote of each house of the legislature.

#### Compiler's Notes

Amendment proposed by Senate Joint Resolution No. 64, Laws 1974, adopted at the general election of November 5, 1974, effective July 1, 1975. The amendment added the exception and deleted a second sentence which read: "This provision shall apply only to causes of action arising after July 1, 1973."

Section 3 of the Transition Schedule provides that "rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive."

#### Convention Notes

New provision abolishing the doctrine of sovereign immunity ("the King can do no wrong") and allowing any person to sue the state and local governments for

injuries caused by officials and employees thereof.

#### Cross-References

Tort claims and state insurance plan, secs. 82-4301 to 82-4327.

#### Legislative Conditions

The purpose of this section was to provide redress for all persons, whether victims of governmental or private torts, and precludes any legislative limitations on the waiver of sovereign immunity; provisions of the State Insurance Plan and Tort Claims Act creating conditions precedent to the bringing of a claim against the state were unconstitutional. *Noll v. City of Bozeman*, — M —, 534 P 2d 880. [Opinion prior to the 1975 amendment of this section.]

**Section 19. Habeas corpus.** The privilege of the writ of habeas corpus shall never be suspended.

#### Compiler's Notes

Section 3 of the Transition Schedule provides that "rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive."

#### Convention Notes

Revises 1889 constitution [Art. III, sec. 21] which allowed the writ of habeas corpus to be suspended in case of rebellion or invasion. Revision provides that the writ (the right to test the lawfulness of a person's being detained) may never be suspended.

#### Cross-References

Habeas corpus, scope and procedure, sec. 95-2701 et seq.

Supreme court jurisdiction, 1972 Const. Art. VII, sec. 2.

#### Parole to Out-of-state Prison

Writ of habeas corpus was not available to secure release of prisoner who had been granted parole in Montana, since prisoner had been concurrently sentenced in Montana and Wyoming, and if parole was accepted the prisoner would be released to the custody of the Wyoming prison. *Petition of Glover*, — M —, 539 P 2d 721.

**Section 20. Initiation of proceedings.** (1) Criminal offenses within the jurisdiction of any court inferior to the district court shall be prosecuted by complaint. All criminal actions in district court, except those on appeal, shall be prosecuted either by information, after examination and commitment by a magistrate or after leave granted by the court, or by indictment without such examination, commitment or leave.

(2) A grand jury shall consist of eleven persons, of whom eight must concur to find an indictment. A grand jury shall be drawn and summoned only at the discretion and order of the district judge.

#### Convention Notes

Retains method in 1889 constitution [Art. III, sec. 8] of starting criminal actions. Increases grand jury from seven to eleven persons.

#### Cross-References

Grand jury, composition and drawing, sec. 93-1801 et seq.

Grand jury, summoning, powers and duties, sec. 95-1401 et seq.



Methods of prosecution, procedure, sec. 95-1501 et seq.

#### Discretion of Judge

Although judicial authority to summon a grand jury is discretionary, this is not absolute unbridled discretion; and upon application of the attorney general with findings and assertions establishing the necessity for the grand jury, it is an abuse of discretion to deny the application. State ex rel. Woodahl v. District Court, — M —, 530 P 2d 780.

#### Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 8, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

**Section 21. Bail.** All persons shall be bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great.

#### Compiler's Notes

A separately submitted proposition against the death penalty which would have deleted from this section: "except for capital offenses, when the proof is evident or the presumption great" was not adopted by the electorate.

#### Cross-References

Bail, purpose, procedure, sec. 95-1101 et seq.

#### Decisions under Former Provisions

For decisions relating to identical provisions in the 1889 Constitution, see annotations following sec. 19, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

#### Convention Notes

Identical to 1889 constitution [Art. III, sec. 19]. Guarantees that all persons are bailable except in case of certain offenses punishable by death.

**Section 22. Excessive sanctions.** Excessive bail shall not be required, or excessive fines imposed, or cruel and unusual punishments inflicted.

#### Convention Notes

Identical to 1889 constitution [Art. III, sec. 20].

#### Death Penalty

The imposition of the death penalty is not per se cruel and unusual punishment; the United States Supreme Court so held in *Gregg v. Georgia*, — US —, 49 L Ed 2d 859, 96 S Ct 2909, and the rejection by the Montana electorate of a provision in the 1972 constitution which would have prohibited imposition of the penalty indicated that it did not violate contemporary standards of decency within the state. State v. McKenzie, — M —, 557 P 2d 1023.

#### Decisions under Former Provisions

For decisions relating to identical provisions in the 1889 Constitution, see annotations following sec. 20, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

**Section 23. Detention.** No person shall be imprisoned for the purpose of securing his testimony in any criminal proceeding longer than may be necessary in order to take his deposition. If he can give security for his appearance at the time of trial, he shall be discharged upon giving the same; if he cannot give security, his deposition shall be taken in the manner provided by law, and in the presence of the accused and his counsel, or without their presence, if they shall fail to attend the examination after reasonable notice of the time and place thereof.

#### Convention Notes

Deleted provision in 1889 constitution [Art. III, sec. 17] that depositions may be used in a trial if the witness who gave it is dead or out of state. Retained language is identical to 1889 constitution.

#### Decisions under Former Provisions

For decisions relating to identical provisions in the 1889 Constitution, see annotations following sec. 17, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

#### Cross-References

Depositions in criminal cases, sec. 95-1802.

**Section 24. Rights of the accused.** In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, subject to the right of the state to have a change of venue for any of the causes for which the defendant may obtain the same.

#### Convention Notes

Identical to 1889 constitution [Art. III, sec. 16]. Establishes fundamental procedural rights of a person accused of crime.

#### Cross-References

Change of place of trial when fair trial cannot be had in county, sec. 95-1710.

Examination of witnesses on commission, sec. 95-1802.

Form of charge, sec. 95-1503.

Method of trial, sec. 95-1901 et seq.

Mistreating prisoners, sec. 94-8-113.

Right to counsel, sec. 95-1001 et seq.

Subpoenas, sec. 95-1801.

Uniform Act to Secure the Attendance of Witnesses from Without the State in Criminal Cases, secs. 95-1809 to 95-1811.

#### Decisions under Former Provisions

For decisions relating to identical provisions in the 1889 Constitution, see annotations following sec. 16, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

#### Confrontation

Where, at sentencing hearing, the trial judge referred to an incident involving the defendant not mentioned in the trial or presentence report but known to the judge and asked defendant if he had anything to say with regard to it, and defendant, with representation of counsel, admitted the incident but made no statement in mitigation of it, there was no denial of the right of confrontation, and the judge could properly consider the incident in passing sentence. *State v. Orsborn*, — M —, 555 P 2d 509.

**Section 25. Self-incrimination and double jeopardy.** No person shall be compelled to testify against himself in a criminal proceeding. No person shall be again put in jeopardy for the same offense previously tried in any jurisdiction.

#### Compiler's Notes

Section 3 of the Transition Schedule provides that "rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive."

#### Representation by Counsel

Defendant's right to appointed counsel attached no later than his initial hearing, and delay of four months in the appointment of counsel rendered counsel ineffective and prejudiced defendant's case. *Fitzpatrick v. Crist*, — M —, 528 P 2d 1322.

#### Speedy Trial

The right of a speedy trial is designed to protect the defendant against oppressive pretrial incarceration, to minimize anxiety, and to limit the possibility that the defense will be impaired; and where accused was held in maximum security without counsel and there was a seven-month delay between his demand for a speedy trial and the trial itself, during which time many of the witnesses disappeared, the rights of the accused were prejudiced and the conviction and sentence were vacated with prejudice. *Fitzpatrick v. Crist*, — M —, 528 P 2d 1322.

In determining whether a particular defendant had been deprived of his right to a speedy trial, the court would adopt a balancing test, to be applied on a case-by-case basis, taking into account the length and reasons for delay, defendant's assertion of his right, and any prejudice resulting from the delay. *State v. Steward*, — M —, 543 P 2d 178; *State ex rel. Sanford v. District Court*, — M —, 551 P 2d 1005.

#### Waiver of Rights

Although constitutional questions should be interposed as promptly as possible, unless there is substantial evidence of waiver appeal of constitutional claims will be heard on their merits. *Fitzpatrick v. Crist*, — M —, 528 P 2d 1322.

#### Convention Notes

Revises 1889 constitution [Art. III, sec. 18] by protecting a person from being tried for the same crime by both this state and the United States or another state.



**Cross-References**

Defense of former prosecution, when allowed, exceptions, sec. 95-1711.

Protection of witnesses against self-incrimination, sec. 93-2101-2.

**Decisions under Former Provisions**

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 18, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

**Attachment of Jeopardy**

Since the constitution does not define the point at which jeopardy attaches, the legislature was free to make that determination; thus, former statute providing for attachment of jeopardy when the first witness was sworn was did not conflict with the Montana constitution. *State v. Cunningham*, — M —, 535 P 2d 186.

Section 95-1711, which provides that jeopardy attaches in criminal trial after first witness is sworn, does not violate double jeopardy clause. *Cunningham v. District Court*, 406 F Supp 430.

**Exercise of Fifth Amendment Privilege**

The testimony of police officer that the defendant when accused and warned of his rights, claimed his fifth amendment privilege, although irrelevant and improper, was harmless error where the state presented overwhelming evidence of guilt and the defendant himself testified at trial. *State v. Flamm*, — M —, 526 P 2d 119.

**Section 26. Trial by jury.** The right of trial by jury is secured to all and shall remain inviolate. But upon default of appearance or by consent of the parties expressed in such manner as the law may provide, all cases may be tried without a jury or before fewer than the number of jurors provided by law. In all civil actions, two-thirds of the jury may render a verdict, and a verdict so rendered shall have the same force and effect as if all had concurred therein. In all criminal actions, the verdict shall be unanimous.

**Compiler's Notes**

Section 3 of the Transition Schedule provides that "rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive."

**Convention Notes**

Revises 1889 constitution [Art. III, sec. 23] by permitting a defendant to waive a jury trial in felony cases as well as civil and misdemeanor cases and by requiring all jurors (rather than 2/3) agree before a defendant may be convicted of a misdemeanor.

**Self-Incrimination**

In the absence of evidence of physical or psychological coercion, the defendant's handwritten confession, made about two hours after the crime was reported and after defendant had been informed of his rights, was voluntarily given and admissible at trial. *State v. Smith*, — M —, 523 P 2d 1395.

**Testimony of Defendant**

Hearing on revocation of probation, which was held prior to trial for criminal charge on same facts alleged as grounds for revocation, was not a violation of defendant's protection against self-incrimination. *State v. Ryan*, — M —, 533 P 2d 1076.

**What Constitutes Acquittal**

Where jury in trial of accused charged alternatively with attempted murder and three progressively lesser included offenses misunderstood court's instructions and reported themselves unable to reach a verdict when in fact they had deadlocked only with respect to the least serious offense, being unanimous for acquittal as to the more serious ones, it was proper to admit juror affidavits asserting this fact, and entry of judgment of acquittal on three most serious offenses was required; hence retrial was barred by this section. *State v. Herron*, — M —, 545 P 2d 678.

**Cross-References**

Civil cases, jury trial of right, M. R. Civ. P., Rule 38.

Criminal cases, method of trial in district court, sec. 95-1901 et seq.

Criminal cases, method of trial in justice and police courts, sec. 95-2004 et seq.

**Decisions under Former Provisions**

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 23, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.



**Section 27. Imprisonment for debt.** No person shall be imprisoned for debt except in the manner provided by law, upon refusal to deliver up his estate for the benefit of his creditors, or in cases of tort, where there is strong presumption of fraud.

**Convention Notes**

Identical to 1889 constitution [Art. III, sec. 12]. Safeguards the right of a person in debt to be free from imprisonment.

**Decisions under Former Provisions**

For decisions relating to identical provisions in the 1889 Constitution, see annotations following sec. 12, Art. III of the 1889 Constitution in bound Volume One, Part 1.

**Section 28. Rights of the convicted.** Laws for the punishment of crime shall be founded on the principles of prevention and reformation. Full rights are restored by termination of state supervision for any offense against the state.

**Compiler's Notes**

Section 3 of the Transition Schedule provides that "rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive."

A separately submitted proposition which would have added the following sentence to this section: "Death shall not be prescribed as a penalty for any crime against the state" was not adopted by the electorate.

**Convention Notes**

Revises 1889 constitution [Art. III, sec. 24] by deleting reference to capital punishment and providing that rights a person loses when convicted of a crime are automatically restored when he has served his sentence.

**Cross-References**

Civil rights to convict suspended, 95-2227.

Execution of sentence, sec. 95-2301 et seq.

Mistreating prisoners, sec. 94-8-113.

Sentence and judgment, sec. 95-2201 et seq.

**Decisions under Former Provisions**

For decisions relating to similar provisions in the 1889 Constitution, see annotation under sec. 24, Art. III of the 1889 Constitution in this supplement.

**Death Penalty**

Failure to incorporate into this section the specific authorization for the legislature to impose the death penalty which was found in Article III, § 24 of the 1889 constitution did not indicate an intent to divest the legislature of such authority in light of the defeat of a proposition specifically prohibiting imposition of the penalty, which was submitted to the electorate at the same time as the rest of this constitution. *State v. McKenzie*, — M —, 557 P 2d 1023.

**Section 29. Eminent domain.** Private property shall not be taken or damaged for public use without just compensation to the full extent of the loss having been first made to or paid into court for the owner. In the event of litigation, just compensation shall include necessary expenses of litigation to be awarded by the court when the private property owner prevails.

**Compiler's Notes**

Section 3 of the Transition Schedule provides that "rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive."

**Convention Notes**

Retains provisions in 1889 constitution [Art. III, sec. 14] on eminent domain and expands its protection by guaranteeing that a property owner who goes to

court and is awarded more money than offered for his property being condemned will be reimbursed for the necessary expenses of the lawsuit (such as appraiser and attorneys fees).

**Cross-References**

Eminent domain, procedure, sec. 93-9901 et seq.

**Decisions under Former Provisions**

For decisions relating to similar pro-

visions in the 1889 Constitution, see annotations following sec. 14, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

#### Litigation Costs

Right to necessary cost of litigation does not arise at the time suit is filed, but

vests only when private property owner secures verdict higher than state's final offer, and thus award of litigation costs was proper in case filed before enactment of new law, but decided after law was in effect. *State, Department of Highways v. Olsen*, — M —, 531 P 2d 1330.

**Section 30. Treason and descent of estates.** Treason against the state shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort; no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on his confession in open court; no person shall be attainted of treason or felony by the legislature; no conviction shall cause the loss of property to the relatives or heirs of the convicted. The estates of suicides shall descend or vest as in cases of natural death.

#### Convention Notes

No change except in grammar [Art. III, sec. 9].

#### Cross-References

Evidence on trial for treason, secs. 93-1401-2, 95-3002.

#### Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations under sec. 9, Art. III of the 1889 Constitution in this supplement.

**Section 31. Ex post facto, obligation of contracts, and irrevocable privileges.** No ex post facto law nor any law impairing the obligation of contracts, or making any irrevocable grant of special privileges, franchises, or immunities, shall be passed by the legislature.

#### Convention Notes

Identical to 1889 constitution [Art. III, sec. 11].

#### Decisions under Former Provisions

For decisions relating to identical provisions in the 1889 Constitution, see annotations following sec. 11, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

#### Liens on Property of Welfare Recipients

Section 71-246.1, releasing all liens held by the department of social and rehabilitation services on real property of welfare recipients, did not violate this provision since state had no vested rights in its liens. *Carkulis v. Doe*, — M —, 521 P 2d 1305.

**Section 32. Civilian control of the military.** The military shall always be in strict subordination to the civil power; no soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war, except in the manner provided by law.

#### Convention Notes

Identical to 1889 constitution [Art. III, sec. 22].

**Section 33. Importation of armed persons.** No armed person or persons or armed body of men shall be brought into this state for the preservation of the peace, or the suppression of domestic violence, except upon the application of the legislature, or of the governor when the legislature cannot be convened.

#### Convention Notes

Identical to 1889 constitution [Art. III, sec. 31].

**Section 34. Unenumerated rights.** The enumeration in this constitution of certain rights shall not be construed to deny, impair, or disparage others retained by the people.

**Convention Notes**

Identical to 1889 constitution [Art. III, sec. 30].

**Decisions under Former Provisions**

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 30, Art. III of the 1889 Constitution in bound Volume One, Part 1.

**Section 35. Servicemen, servicewomen, and veterans.** The people declare that Montana servicemen, servicewomen, and veterans may be given special considerations determined by the legislature.

**Compiler's Notes**

Section 3 of the Transition Schedule provides that "rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive."

**Convention Notes**

New provision allowing legislature to give servicemen, servicewomen, and veterans special treatment in the law.

## ARTICLE III

### GENERAL GOVERNMENT

**Section**

1. Separation of powers.
2. Continuity of government.
3. Oath of office.
4. Initiative.
5. Referendum.
6. Elections.
7. Number of electors.
8. Prohibition.
9. Gambling.

**Section 1. Separation of powers.** The power of the government of this state is divided into three distinct branches—legislative, executive, and judicial. No person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted.

**Convention Notes**

Identical to 1889 constitution [Art. IV, sec. 1] except for substitution of the word "branches" for "departments." This distinguishes the three branches of government from the 20 departments in the executive branch.

**Decisions under Former Provisions**

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 1, Art. IV of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

**Budget Information**

Sections 43-1114 and 43-1115 do not impose unconstitutional burden upon state

government, since power to approve appropriation bills and budget is in legislative branch, and committee may require such information from other branches as is reasonably necessary to form rational basis for budget determinations. State ex rel. Judge v. Legislative Finance Committee, — M —, 543 P 2d 1317.

**Delegation of Power**

There was no unlawful delegation of power where legislature empowered board of regents to promulgate regulations controlling vehicles on campus, and provided penalty for violations of those regulations. Montana State University v. Ransier, — M —, 536 P 2d 187.



**Section 2. Continuity of government.** The seat of government shall be in Helena, except during periods of emergency resulting from disasters or enemy attack. The legislature may enact laws to insure the continuity of government during a period of emergency without regard for other provisions of the constitution. They shall be effective only during the period of emergency that affects a particular office or governmental operation.

#### Convention Notes

Revises 1889 constitution [Art. X, sec. 3] by removing provision which allowed seat of government to be moved by a vote of 2/3 of the people. No other change except

in grammar. [See also 1889 constitution Art. V, sec. 46.]

#### Cross-References

Continuity in government, post-enemy attack, sec. 82-3801 et seq.

**Section 3. Oath of office.** Members of the legislature and all executive, ministerial and judicial officers, shall take and subscribe the following oath or affirmation, before they enter upon the duties of their offices: "I do solemnly swear (or affirm) that I will support, protect and defend the constitution of the United States, and the constitution of the state of Montana, and that I will discharge the duties of my office with fidelity (so help me God)." No other oath, declaration, or test shall be required as a qualification for any office or public trust.

#### Convention Notes

Shortened version of oath contained in 1889 constitution [Art. XIX, sec. 1].

#### Cross-References

Form of oath, filing, sec. 59-413 et seq.

#### Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 1, Art. XIX of the 1889 Constitution in bound Volume One, Part 1.

**Section 4. Initiative.** (1) The people may enact laws by initiative on all matters except appropriations of money and local or special laws.

(2) Initiative petitions must contain the full text of the proposed measure, shall be signed by at least five percent of the qualified electors in each of at least one-third of the legislative representative districts and the total number of signers must be at least five percent of the total qualified electors of the state. Petitions shall be filed with the secretary of state at least three months prior to the election at which the measure will be voted upon.

(3) The sufficiency of the initiative petition shall not be questioned after the election is held.

#### Convention Notes

Revises 1889 constitution [Art. V, sec. 1] by requiring a petition to be signed by 5% of electors in 1/3 of the legislative districts instead of 8% in 2/5 of the counties.

#### Cross-References

Form of petition, procedure, sec. 37-102 et seq.

Reservation of powers of initiative and referendum, 1972 Const. Art. V, sec. 1.

#### Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 1, Art. V of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

**Section 5. Referendum.** (1) The people may approve or reject by referendum any act of the legislature except an appropriation of money. A referendum shall be held either upon order by the legislature or upon

petition signed by at least five percent of the qualified electors in each of at least one-third of the legislative representative districts. The total number of signers must be at least five percent of the qualified electors of the state. A referendum petition shall be filed with the secretary of state no later than six months after adjournment of the legislature which passed the act.

(2) An act referred to the people is in effect until suspended by petitions signed by at least 15 percent of the qualified electors in a majority of the legislative representative districts. If so suspended the act shall become operative only after it is approved at an election, the result of which has been determined and declared as provided by law.

#### Convention Notes

Revises 1889 constitution [Art. V, sec. 1] by allowing people to vote on any act of the legislature except appropriations and by requiring referendum petitions to be signed by 5% of the electors in 1/3 of the legislative districts instead of 8% of the electors in 2/5 of the counties. (1889 Constitution does not allow referendums on laws "necessary for the immediate preservation of the public peace, health, or safety.")

#### Cross-References

Form of petition, procedure, secs. 37-101, 37-103 et seq.

Reservation of powers of initiative and referendum, 1972 Const. Art. V, sec. 1.

#### Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 1, Art. V of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

#### Referendum of Ratification of Amendment of Federal Constitution

Submission of referendum to voters seeking their approval or rejection of the completed ratification by the Montana legislative assembly of the equal rights amendment to the U.S. constitution was enjoined as a useless act since the voters' approval or rejection would not affect the ratification. *State ex rel. Hatch v. Murray*, — M —, 526 P 2d 1369.

**Section 6. Elections.** The people shall vote on initiative and referendum measures at the general election unless the legislature orders a special election.

#### Convention Notes

No change except in grammar [Art. V, sec. 1].

#### Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 1, Art. V of the 1889 Constitution in bound Volume One, Part 1.

**Section 7. Number of electors.** The number of qualified electors required in each legislative representative district and in the state shall be determined by the number of votes cast for the office of governor in the preceding general election.

#### Convention Notes

No change except in grammar [Art. V, sec. 1].

**Section 8. Prohibition.** The provisions of this Article do not apply to CONSTITUTIONAL REVISION, Article XIV.

#### Convention Notes

New provision which differentiates the general initiative and referendum re-

quirements from the special initiative and referendum requirements for amending the constitution.

**Section 9. Gambling.** All forms of gambling, lotteries, and gift enterprises are prohibited unless authorized by acts of the legislature or by the people through initiative or referendum.

**Compiler's Notes**

This section became a part of the constitution as the result of the approval by the electorate of a separately submitted provision. The adoption added: "unless authorized by acts of the legislature or by the people through initiative or referendum."

**Convention Notes**

Adds the word "gambling" to language of 1889 constitution [Art. XIX, sec. 2]. Makes it clear that all forms of gambling are prohibited. [See Compiler's Notes, above.]

**Cross-References**

Bingo and Raffles Law, secs. 62-715 to 62-726.

Card Games Act, secs. 62-701 to 62-714.

Gambling prohibited, secs. 94-8-401 to 94-8-431.

Horse racing, secs. 62-502 to 62-515, 82A-1602.13.

Sports pools, secs. 62-727 to 62-736.

**Decisions under Former Provisions**

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 2, art. XIX of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

**Effect on Prior Laws**

This section did not revive or make constitutional any gambling laws which had already been held invalid under 1889 constitution, but merely provided that people or legislature could legalize gambling by some affirmative act after effective date of new constitution. State ex rel. Woodahl v. District Court, — M —, 511 P 2d 318, distinguished in — M —, 520 P 2d 776, 779.

**ARTICLE IV****SUFFRAGE AND ELECTIONS****Section**

1. Ballot.
2. Qualified elector.
3. Elections.
4. Eligibility for public office.
5. Result of elections.
6. Privilege from arrest.

**Section 1. Ballot.** All elections by the people shall be by secret ballot.

**Convention Notes**

Revises 1889 constitution [Art. IX, sec. 1] by adding the word "secret."

**Cross-References**

Elections to be by ballot, sec. 23-2602.

**Decisions under Former Provisions**

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 1, Art. IX of the 1889 Constitution in bound Volume One, Part 1.

**Section 2. Qualified elector.** Any citizen of the United States 18 years of age or older who meets the registration and residence requirements provided by law is a qualified elector unless he is serving a sentence for a felony in a penal institution or is of unsound mind, as determined by a court.

**Convention Notes**

Revises 1889 constitution [Art. IX, secs. 2, 3, 6, 8, 12]. Provides legislative rather than constitutional requirements for residence and registration. Convicted felon loses voting rights only while incarcerated. (18 is voting age established for ALL elections by 26th amendment to U.S. constitution ratified June 30, 1971).

**Cross-References**

Attempting to vote without being qualified, misdemeanor, sec. 23-4704.

Qualifications of voters, sec. 23-2701.

**Decisions under Former Provisions**

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 2, Art. IX of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.



**Section 3. Elections.** The legislature shall provide by law the requirements for residence, registration, absentee voting, and administration of elections. It may provide for a system of poll booth registration, and shall insure the purity of elections and guard against abuses of the electoral process.

#### Convention Notes

Revises 1889 constitution [Art. IX, secs. 2, 9]. Provides legislative rather than constitutional establishment of requirements which are often affected by (and sometimes in conflict with) federal law and court decisions. When necessary to comply with federal requirements it is much easier to change the law than to amend the constitution. Second sentence specifically authorizes legislature to provide for voter registration at time and place of voting—rather than in advance of election.

#### Cross-References

Absentee voting and registration, secs. 23-3006, 23-3701 et seq.

Election frauds and offenses, sec. 23-4701 et seq.

Elections, definitions and general provisions, sec. 23-2601 et seq.

Registration of electors, sec. 23-3001 et seq.

#### Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 2 and 9, Art. IX of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

**Section 4. Eligibility for public office.** Any qualified elector is eligible to any public office except as otherwise provided in this constitution. The legislature may provide additional qualifications but no person convicted of a felony shall be eligible to hold office until his final discharge from state supervision.

#### Convention Notes

Revises 1889 constitution [Art. IX, secs. 7, 10, 11] by providing that a felon's right to seek public office is automatically restored after serving sentence.

#### Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 10 and 11, Art. IX of the 1889 Constitution in bound Volume One, Part 1.

#### Cross-References

Disqualifications and restrictions, sec. 59-301 et seq.

**Section 5. Result of elections.** In all elections held by the people, the person or persons receiving the largest number of votes shall be declared elected.

#### Convention Notes

No change except in grammar [Art. IX, sec. 13].

#### Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 13, Art. IX of the 1889 Constitution in bound Volume One, Part 1.

#### Cross-References

Determination of candidate elected, sec. 23-2603.

**Section 6. Privilege from arrest.** A qualified elector is privileged from arrest at polling places and in going to and returning therefrom, unless apprehended in the commission of a felony or a breach of the peace.

#### Convention Notes

1889 constitution [Art. IX, sec. 4] reworded. Voter is immune from arrest during the voting process unless during such time he commits a felony or breach of peace.

#### Cross-References

Privilege from arrest, secs. 23-2705, 95-616.

## ARTICLE V

### THE LEGISLATURE

#### Section

1. Power and structure.
2. Size.
3. Election and terms.
4. Qualifications.
5. Compensation.
6. Sessions.
7. Vacancies.
8. Immunity.
9. Disqualification.
10. Organization and procedure.
11. Bills.
12. Local and special legislation.
13. Impeachment.
14. Districting and apportionment.

**Section 1. Power and structure.** The legislative power is vested in a legislature consisting of a senate and a house of representatives. The people reserve to themselves the powers of initiative and referendum.

#### Compiler's Notes

Section 2 of the Transition Schedule provides that this section shall not become effective until the date the first redistricting and reapportionment plan becomes law.

A separately submitted proposition concerning a unicameral legislature, was not adopted by the electorate.

#### Convention Notes

No change except in grammar [Art. V, sec. 1].

#### Cross-References

Composition of legislative assembly, sec. 43-201.

Initiative, 1972 Const. Art. III, sec. 4.

Referendum, 1972 Const. Art. III, sec. 5.

**Section 2. Size.** The size of the legislature shall be provided by law, but the senate shall not have more than 50 or fewer than 40 members and the house shall not have more than 100 or fewer than 80 members.

#### Compiler's Notes

Section 2 of the Transition Schedule provides that this section shall not become effective until the date the first redistricting and reapportionment plan becomes law.

#### Convention Notes

New provision for determining size of legislature.

**Section 3. Election and terms.** A member of the house of representatives shall be elected for a term of two years and a member of the senate for a term of four years each to begin on a date provided by law. One-half of the senators shall be elected every two years.

#### Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 1, Art. V of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

#### Budget Information Powers

Sections 43-1114 and 43-1115 do not impose unconstitutional burden upon state government, since power to approve appropriation bills and budget is in legislative branch, and committee may require such information from other branches as is reasonably necessary to form rational basis for budget determinations. State ex rel. Judge v. Legislative Finance Committee, — M —, 543 P 2d 1317.

#### Decisions under Former Provisions

For decision on related provisions in the 1889 Constitution, see annotation under sec. 4, Art. V of the 1889 Constitution in this supplement.

**Compiler's Notes**

Section 2 of the Transition Schedule provides that this section shall not become effective until the date the first redistricting and reapportionment plan becomes law.

Section 5 of the Transition Schedule provides:

"(1) The terms of all legislators elected before the effective date of this Constitution shall end on December 31 of the year in which the first redistricting and reapportionment plan becomes law.

"(2) The senators first elected under

this Constitution shall draw lots to establish a term of two years for one-half of their number."

**Convention Notes**

Revises 1889 constitution [Art. V, sec. 2] by adding requirement for staggered terms for senators.

**Decisions under Former Provisions**

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 2, Art. V of the 1889 Constitution in bound Volume One, Part 1.

**Section 4. Qualifications.** A candidate for the legislature shall be a resident of the state for at least one year next preceding the general election. For six months next preceding the general election, he shall be a resident of the county if it contains one or more districts or of the district if it contains all or parts of more than one county.

**Convention Notes**

Revises 1889 constitution [Art. V, sec. 3] by reducing district or county resi-

dency requirements from one year to six months and eliminating age requirements.

**Section 5. Compensation.** Each member of the legislature shall receive compensation for his services and allowances provided by law. No legislature may fix its own compensation.

**Convention Notes**

No change except in grammar [Art. V, secs. 5, 8].

**Cross-References**

Per diem, mileage and expenses of members, sec. 43-310.

**Decisions under Former Provisions**

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 5 and 8, Art. V of the 1889 Constitution in bound Volume One, Part 1.

**Section 6. Sessions.** The legislature shall meet each odd-numbered year in regular session of not more than 90 legislative days. Any legislature may increase the limit on the length of any subsequent session. The legislature may be convened in special sessions by the governor or at the written request of a majority of the members:

**Compiler's Notes**

Amendment proposed by Initiative Petition, adopted at the general election of November 5, 1974, effective December 31, 1974. The amendment deleted two sentences at the beginning of the section which read: "The legislature shall be a continuous body for two-year periods beginning when newly elected members take office. Any business, bill, or resolution pending at adjournment of a session shall carry over with the same status to any other session of the legislature during the biennium." and rewrote the first sentence which read: "The legislature shall meet at least once a year in regular session of not more than 60 legislative days."

Section 1 of the Transition Schedule provides that this section shall be effective January 1, 1973.

**Convention Notes**

New provision. "Continuous body" does not mean the legislature is in continuous session but means the legislature has legal existence even when not actually meeting. It will have regular annual sessions of 60 days. A legislature cannot pass a law that IT can meet for more than 60 legislative days but can provide that future legislatures may meet longer. Legislature as well as the governor may call a special session. [See 1889 constitution Art. V, secs. 5, 6.]

**Cross-References**

Special sessions, procedure for calling, secs. 43-319 to 43-325.



**Section 7. Vacancies.** A vacancy in the legislature shall be filled by special election for the unexpired term unless otherwise provided by law.

**Convention Notes**

New provision which would require filling vacancies by election if the present law requiring appointments is ever repealed.

**Cross-References**

Vacancies, how filled, sec. 59-604 et seq.

**Section 8. Immunity.** A member of the legislature is privileged from arrest during attendance at sessions of the legislature and in going to and returning therefrom, unless apprehended in the commission of a felony or a breach of the peace. He shall not be questioned in any other place for any speech or debate in the legislature.

**Convention Notes**

No change except in grammar [Art. V, sec. 15].

**Cross-References**

Privilege from arrest, sec. 95-616.

**Decisions under Former Provisions**

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 15, Art. V of the 1889 Constitution in bound Volume One, Part 1.

**Section 9. Disqualification.** No member of the legislature shall, during the term for which he shall have been elected, be appointed to any civil office under the state; and no member of congress, or other person holding an office (except notary public, or the militia) under the United States or this state, shall be a member of the legislature during his continuance in office.

**Proposed Amendment**

Chapter 358, Laws of 1977, proposes to amend this section to read as follows: "No member of the legislature shall, during the term for which he shall have been elected, be appointed to any civil office under the state. A legislator may be a candidate for public office before the end of his term. He shall resign before assuming another office. No member of congress, or other person holding an office (except notary public, or the militia) under the United States or this state, shall be a member of the legislature during his continuance in office."

The proposed amendment is to be submitted to the electors of the State of Montana at the General Election to be held November 7, 1978.

**Convention Notes**

No change except in grammar [Art. V, sec. 7].

**Decisions under Former Provisions**

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 7, Art. V of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

**Delegation of Powers**

A committee of the legislature may not be considered an executive agency for the purpose of delegating powers to it, because, under this section, members of the legislature are disqualified from membership on executive agencies. State ex rel. Judge v. Legislative Finance Committee, — M —, 543 P 2d 1317.

**Section 10. Organization and procedure.** (1) Each house shall judge the election and qualifications of its members. It may by law vest in the courts the power to try and determine contested elections. Each house shall choose its officers from among its members, keep a journal, and make rules for its proceedings. Each house may expel or punish a member for good cause shown with the concurrence of two-thirds of all its members.

(2) A majority of each house constitutes a quorum. A smaller number may adjourn from day to day and compel attendance of absent members.

(3) The sessions of the legislature and of the committee of the whole, all committee meetings, and all hearings shall be open to the public.

(4) The legislature may establish a legislative council and other interim committees. The legislature shall establish a legislative post-audit committee which shall supervise post-auditing duties provided by law.

(5) Neither house shall, without the consent of the other, adjourn or recess for more than three days or to any place other than that in which the two houses are sitting.

#### Convention Notes

(1) and (2) no change except in grammar [Art. V, secs. 9, 10, 11, 12]. (3) Revises 1889 Constitution [Art. V, sec. 13] by preventing the legislature from conducting secret proceedings. (4) New provision specifically allowing the legislature to create committees to work between the annual meetings. (5) No change except in grammar [Art. V, sec. 14].

#### Cross-References

Disturbing or disrupting lawful assembly or public meeting, sec. 94-8-101(1)(g).  
Legislative council, sec. 43-709 et seq.

#### Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 9, 11 and 12, Art. V of the 1889 Constitution in bound Volume One, Part 1.

#### Interim Committees

Those parts of §§ 43-1117, 43-1118, 43-1119 empowering finance committee to approve budget amendments are declared invalid as unconstitutional delegations of legislative power, since this power is properly exercisable only by either entire legislature or executive officer or agency; not by interim committee. State ex rel. Judge v. Legislative Finance Committee, — M —, 543 P 2d 1317.

**Section 11. Bills.** (1) A law shall be passed by bill which shall not be so altered or amended on its passage through the legislature as to change its original purpose. No bill shall become law except by a vote of the majority of all members present and voting.

(2) Every vote of each member of the legislature on each substantive question in the legislature, in any committee, or in committee of the whole shall be recorded and made public. On final passage, the vote shall be taken by ayes and noes and the names entered on the journal.

(3) Each bill, except general appropriation bills and bills for the codification and general revision of the laws, shall contain only one subject, clearly expressed in its title. If any subject is embraced in any act and is not expressed in the title, only so much of the act not so expressed is void.

(4) A general appropriation bill shall contain only appropriations for the ordinary expenses of the legislative, executive, and judicial branches, for interest on the public debt, and for public schools. Every other appropriation shall be made by a separate bill, containing but one subject.

(5) No appropriation shall be made for religious, charitable, industrial, educational, or benevolent purposes to any private individual, private association, or private corporation not under control of the state.

(6) A law may be challenged on the ground of noncompliance with this section only within two years after its effective date.

#### Convention Notes

(1) No change except in grammar [Art. V, sec. 19]. (2) Changes 1889 constitution [Art. V, sec. 24] by requiring recorded votes on all actions which affect passage of a bill. (3) (4) (5) No change except in grammar [Art. V, secs. 23, 33, 35]. (6) New provision. After it is two years old a

law cannot be challenged in court because of technical errors in the way it was passed.

#### Cross-References

Bribery in official and political matters, sec. 94-7-102.  
Journals, how authenticated, sec. 43-304.

Official misconduct, sec. 94-7-401.

Tampering with public records or information, sec. 94-7-209.

#### Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 19, 23, 24, 33 and 35, Art. V of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

#### Delegation of Power

Those parts of §§ 43-1117, 43-1118 and 43-1119 empowering legislative finance committee to approve budget amendments are declared invalid as unconstitutional delegations of legislative power, since this

power is properly exercisable only by either entire legislature or executive officer or agency, not by interim committee. State ex rel. Judge v. Legislative Finance Committee, — M —, 543 P 2d 1317.

#### Separation of Powers

Sections 43-1114 and 43-1115 do not impose unconstitutional burden upon state government, since power to approve appropriation bills and budget is in legislative branch, and committee may require such information from other branches as is reasonably necessary to form rational basis for budget determinations. State ex rel. Judge v. Legislative Finance Committee, — M —, 543 P 2d 1317.

**Section 12. Local and special legislation.** The legislature shall not pass a special or local act when a general act is, or can be made, applicable.

#### Convention Notes

No change except in grammar [Art. V, sec. 26].

#### Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 26, Art. V of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

**Section 13. Impeachment.** (1) The governor, executive officers, heads of state departments, judicial officers, and such other officers as may be provided by law are subject to impeachment, and upon conviction shall be removed from office. Other proceedings for removal from public office for cause may be provided by law.

(2) The legislature shall provide for the manner, procedure, and causes for impeachment and may select the senate as tribunal.

(3) Impeachment shall be brought only by a two-thirds vote of the house. The tribunal hearing the charges shall convict only by a vote of two-thirds or more of its members.

(4) Conviction shall extend only to removal from office, but the party, whether convicted or acquitted, shall also be liable to prosecution according to law.

#### Convention Notes

Minor revision [Art. V, secs. 16, 17, 18]. Two-thirds rather than a majority vote necessary to impeach. The legislature may choose the senate or another body to hear the charges.

Official misconduct, sec. 94-7-401.

#### Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 16 to 18, Art. V of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

#### Cross-References

Impeachment, procedure, sec. 95-2801 et seq.

**Section 14. Districting and apportionment.** (1) The state shall be divided into as many districts as there are members of the house, and each district shall elect one representative. Each senate district shall be composed of two adjoining house districts, and shall elect one senator. Each



district shall consist of compact and contiguous territory. All districts shall be as nearly equal in population as is practicable.

(2) In the legislative session following ratification of this constitution and thereafter in each session preceding each federal population census, a commission of five citizens, none of whom may be public officials, shall be selected to prepare a plan for redistricting and reapportioning the state into legislative and congressional districts. The majority and minority leaders of each house shall each designate one commissioner. Within 20 days after their designation, the four commissioners shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time prescribed, a majority of the supreme court shall select him.

(3) The commission shall submit its plan to the legislature at the first regular session after its appointment or after the census figures are available. Within 30 days after submission, the legislature shall return the plan to the commission with its recommendations. Within 30 days thereafter, the commission shall file its final plan with the secretary of state and it shall become law. The commission is then dissolved.

#### Compiler's Notes

Section 1 of the Transition Schedule provides that this section shall be effective January 1, 1973.

#### Convention Notes

(1) New provision for single-member house districts. Two house districts constitute a senatorial district. (2) and (3) new provision which establishes a five member commission to recommend a re-

apportionment plan after each U.S. census. [See 1889 constitution Art. VI, secs. 2, 3.]

#### Cross-References

Senatorial, representative and congressional districts, sec. 43-108 et seq.

#### Decisions under Former Provisions

For decisions relating to provisions in the 1889 Constitution, see annotations under Article VI of the 1889 Constitution in this supplement.

## ARTICLE VI THE EXECUTIVE

### Section

1. Officers.
2. Election.
3. Qualifications.
4. Duties.
5. Compensation.
6. Vacancy in office.
7. Twenty departments.
8. Appointing power.
9. Budget and messages.
10. Veto power.
11. Special session.
12. Pardons.
13. Militia.
14. Succession.
15. Information for governor.

**Section 1. Officers.** (1) The executive branch includes a governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor.

(2) Each holds office for a term of four years which begins on the

first Monday of January next succeeding election, and until a successor is elected and qualified.

(3) Each shall reside at the seat of government, there keep the public records of his office, and perform such other duties as are provided in this constitution and by law.

#### Convention Notes

Revises 1889 constitution [Art. VII, secs. 1, 8, 20]. Removes constitutional status of state treasurer, board of examiners, and state examiner. The offices still appear in the law. All officers mentioned must reside at capital. 1889 constitution exempts lieutenant governor from this requirement.

#### Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 1, Art. VII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

**Section 2. Election.** (1) The governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor shall be elected by the qualified electors at a general election provided by law.

(2) Each candidate for governor shall file jointly with a candidate for lieutenant governor in primary elections, or so otherwise comply with nomination procedures provided by law that the offices of governor and lieutenant governor are voted upon together in primary and general elections.

#### Convention Notes

Only change [Art. VII, sec. 2] is subsection (2) which is new requirement that

governor and lieutenant governor must run as a team.

**Section 3. Qualifications.** (1) No person shall be eligible to the office of governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, or auditor unless he is 25 years of age or older at the time of his election. In addition, each shall be a citizen of the United States who has resided within the state two years next preceding his election.

(2) Any person with the foregoing qualifications is eligible to the office of attorney general if an attorney in good standing admitted to practice law in Montana who has engaged in the active practice thereof for at least five years before election.

(3) The superintendent of public instruction shall have such educational qualifications as are provided by law.

#### Convention Notes

Revises 1889 constitution [Art. VII, sec. 3]. Sets 25 as age requirement for governor, lieutenant governor, superintendent of public instruction and attorney general. Age requirement for secretary of state unchanged. New requirements that candidate for attorney general be admitted

to practice law for five years and superintendent of public instruction have educational qualifications set by law.

#### Cross-References

Superintendent of public instruction, qualifications, sec. 75-5702.

**Section 4. Duties.** (1) The executive power is vested in the governor who shall see that the laws are faithfully executed. He shall have such other duties as are provided in this constitution and by law.

(2) The lieutenant governor shall perform the duties provided by law and those delegated to him by the governor. No power specifically vested in the governor by this constitution may be delegated to the lieutenant governor.

(3) The secretary of state shall maintain official records of the executive branch and of the acts of the legislature, as provided by law. He shall keep the great seal of the state of Montana and perform any other duties provided by law.

(4) The attorney general is the legal officer of the state and shall have the duties and powers provided by law.

(5) The superintendent of public instruction and the auditor shall have such duties as are provided by law.

#### Convention Notes

Only change [Art. VII, secs. 1, 5, 15, 17] is subsection (2) which is new provision allowing legislature to make lieutenant governor full time. Deletes provision that lieutenant governor be president of senate.

#### Cross-References

Attorney general, duties, sec. 82-401.  
Governor, powers and duties, sec. 82-1301.  
Lieutenant governor, duties, sec. 82-1702.3.

Secretary of state, custody of records, duties, sec. 82-2201 et seq.

State auditor, general fiscal duties, sec. 79-101.

Superintendent of public instruction, election, duties, sec. 75-5701 et seq.

#### Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 1, 5 and 15, Art. VII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

**Section 5. Compensation.** (1) Officers of the executive branch shall receive salaries provided by law.

(2) During his term, no elected officer of the executive branch may hold another public office or receive compensation for services from any other governmental agency. He may be a candidate for any public office during his term.

#### Convention Notes

Revises 1889 constitution [Art. VII, sec. 4]. Salaries may be increased or decreased. Public official may not receive more than one salary or hold more than one office but may be candidate for another office without resigning.

#### Cross-References

Salaries of elected state officials, sec. 25-501.

#### Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 4, Art. VII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

**Section 6. Vacancy in office.** (1) If the office of lieutenant governor becomes vacant by his succession to the office of governor, or by his death, resignation, or disability as determined by law, the governor shall appoint a qualified person to serve in that office for the remainder of the term. If both the elected governor and the elected lieutenant governor become unable to serve in the office of governor, succession to the respective offices shall be as provided by law for the period until the next general election. Then, a governor and lieutenant governor shall be elected to fill the remainder of the original term.

(2) If the office of secretary of state, attorney general, auditor, or



superintendent of public instruction becomes vacant by death, resignation, or disability as determined by law, the governor shall appoint a qualified person to serve in that office until the next general election and until a successor is elected and qualified. The person elected to fill a vacancy shall hold the office until the expiration of the term for which his predecessor was elected.

#### Convention Notes

Revises 1889 constitution [Art. VII, secs. 7, 15, 16] by changing method of filling vacancy in office of lieutenant governor. Senate confirmation no longer required for appointments to fill vacancies in offices listed.

#### Cross-References

Resignation and vacancies, sec. 59-601 et seq.

#### Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 7 and 15, Art. VII of the 1889 Constitution in bound Volume One, Part 1.

**Section 7. Twenty departments.** All executive and administrative offices, boards, bureaus, commissions, agencies and instrumentalities of the executive branch (except for the office of governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor) and their respective functions, powers, and duties, shall be allocated by law among not more than 20 principal departments so as to provide an orderly arrangement in the administrative organization of state government. Temporary commissions may be established by law and need not be allocated within a department.

#### Convention Notes

Only grammar change in 20 department reorganization amendment [Art. VII, sec. 21] adopted by the people in November, 1970.

#### Cross-References

Reorganization of executive branch, Title 82A.

**Section 8. Appointing power.** (1) The departments provided for in section 7 shall be under the supervision of the governor. Except as otherwise provided in this constitution or by law, each department shall be headed by a single executive appointed by the governor subject to confirmation by the senate to hold office until the end of the governor's term unless sooner removed by the governor.

(2) The governor shall appoint, subject to confirmation by the senate, all officers provided for in this constitution or by law whose appointment or election is not otherwise provided for. They shall hold office until the end of the governor's term unless sooner removed by the governor.

(3) If a vacancy occurs in any such office when the legislature is not in session, the governor shall appoint a qualified person to discharge the duties thereof until the office is filled by appointment and confirmation.

(4) A person not confirmed by the senate for an office shall not, except at its request, be nominated again for that office at the same session, or be appointed to that office when the legislature is not in session.

#### Convention Notes

Subsection (1) new provision. Unless law provides otherwise governor appoints

heads of the 20 departments, subject to senate confirmation. No change except in grammar in subsections (2) and (3) [Art.

VII, sec. 7]. Subsection (4) is new provision prohibiting nomination or appointment of persons previously rejected by senate.

#### Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 7, Art. VII of the 1889 Constitution in bound Volume One, Part 1.

**Section 9. Budget and messages.** The governor shall at the beginning of each legislative session, and may at other times, give the legislature information and recommend measures he considers necessary. The governor shall submit to the legislature at a time fixed by law, a budget for the ensuing fiscal period setting forth in detail for all operating funds the proposed expenditures and estimated revenue of the state.

#### Convention Notes

Makes it mandatory that Governor send budget to legislature. Otherwise no change except in grammar [Art. VII, sec. 10].

#### Cross-References

Budget, submission to legislature, form, contents, sec. 79-1015.

#### Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 10, Art. VII of the 1889 Constitution in bound Volume One, Part 1.

#### Separation of Powers

Sections 43-1114 and 43-1115, requiring agencies to furnish budget information to a legislative committee, do not impose unconstitutional burden upon state government, since power to approve appropriation bills and budget is in legislative branch, and committee may require such information from other branches as is reasonably necessary to form rational basis for budget determinations. State ex rel. Judge v. Legislative Finance Committee, — M —, 543 P 2d 1317.

**Section 10. Veto power.** (1) Each bill passed by the legislature, except bills proposing amendments to the Montana constitution, bills ratifying proposed amendments to the United States constitution, resolutions, and initiative and referendum measures, shall be submitted to the governor for his signature. If he does not sign or veto the bill within five days after its delivery to him if the legislature is in session or within 25 days if the legislature is adjourned, it shall become law. The governor shall return a vetoed bill to the legislature with a statement of his reasons therefor.

(2) The governor may return any bill to the legislature with his recommendation for amendment. If the legislature passes the bill in accordance with the governor's recommendation, it shall again return the bill to the governor for his reconsideration. The governor shall not return a bill for amendment a second time.

(3) If after receipt of a veto message, two-thirds of the members present approve the bill, it shall become law.

(4) If the legislature is not in session when the governor vetoes a bill, he shall return the bill with his reasons therefor to the legislature as provided by law. The legislature may reconvene to reconsider any bill so vetoed.

(5) The governor may veto items in appropriation bills, and in such instances the procedure shall be the same as upon veto of an entire bill.

#### Convention Notes

Subsection (1) revises 1889 constitution [Art. VII, sec. 12]. Amendments to U.S. and Montana constitutions and legislative

resolutions may be passed without governor's signature. [See 1889 constitution Art. V, sec. 40 and Art. XIX, sec. 9.] Pocket veto after adjournment eliminated.

Subsection (2) new provision. "Amendatory veto" enables governor to return bills with suggestions for changes. No change in subsection (3) except for grammar [Art. VII, sec. 12]. Provision in subsection (4) for reconvening to consider vetoed bills is new. [Subsection (5), see 1889 constitution Art. VII, sec. 13.]

#### Cross-References

Bills, governor's approval or veto, sec. 43-501 et seq.

**Section 11. Special session.** Whenever the governor considers it in the public interest, he may convene the legislature.

#### Convention Notes

Revises 1889 constitution [Art. VII, sec. 11]. Continues power of governor to call special sessions of the legislature but removes his power to limit subjects to be considered.

Reconvening to reconsider vetoed bills, secs. 43-320 to 43-325, 43-504 (3).

#### Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 40, Art. V; and following secs. 12 and 13, Art. VII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

**Section 12. Pardons.** The governor may grant reprieves, commutations and pardons, restore citizenship, and suspend and remit fines and forfeitures subject to procedures provided by law.

#### Convention Notes

Revises 1889 constitution [Art. VII, sec. 9]. Deletes reference to board of pardons (which is provided for by law) and to the board of prison commissioners (which is defunct).

#### Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 11, Art. VII of the 1889 Constitution in bound Volume One, Part 1.

#### Cross-References

Probation, parole and executive clemency act, sec. 95-3203 et seq.

**Section 13. Militia.** (1) The governor is commander-in-chief of the militia forces of the state, except when they are in the actual service of the United States. He may call out any part or all of the forces to aid in the execution of the laws, suppress insurrection, repel invasion, or protect life and property in natural disasters.

(2) The militia forces shall consist of all able-bodied citizens of the state except those exempted by law.

#### Convention Notes

Last phrase of subsection (1) [Art. VII, sec. 6] regarding protection of life and property is new. Subsection (2) [Art. XIV, sec. 1] removes sex and age qualifications for militia.

#### Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 9, Art. VII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

#### Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 6, Art. VII, and following sec. 1, Art. XIV of the 1889 Constitution in bound Volume One, Part 1.

**Section 14. Succession.** (1) If the governor-elect is disqualified or dies, the lieutenant governor-elect upon qualifying for the office shall become governor for the full term. If the governor-elect fails to assume office for any other reason, the lieutenant governor-elect upon qualifying as such shall serve as acting governor until the governor-elect is able to assume office, or until the office becomes vacant.



(2) The lieutenant governor shall serve as acting governor when so requested in writing by the governor. After the governor has been absent from the state for more than 45 consecutive days, the lieutenant governor shall serve as acting governor.

(3) He shall serve as acting governor when the governor is so disabled as to be unable to communicate to the lieutenant governor the fact of his inability to perform the duties of his office. The lieutenant governor shall continue to serve as acting governor until the governor is able to resume the duties of his office.

(4) Whenever, at any other time, the lieutenant governor and attorney general transmit to the legislature their written declaration that the governor is unable to discharge the powers and duties of his office, the legislature shall convene to determine whether he is able to do so.

(5) If the legislature, within 21 days after convening, determines by two-thirds vote of its members that the governor is unable to discharge the powers and duties of his office, the lieutenant governor shall serve as acting governor. Thereafter, when the governor transmits to the legislature his written declaration that no inability exists, he shall resume the powers and duties of his office within 15 days, unless the legislature determines otherwise by two-thirds vote of its members. If the legislature so determines, the lieutenant governor shall continue to serve as acting governor.

(6) If the office of governor becomes vacant by reason of death, resignation, or disqualification, the lieutenant governor shall become governor for the remainder of the term, except as provided in this constitution.

(7) Additional succession to fill vacancies shall be provided by law.

(8) When there is a vacancy in the office of governor, the successor shall be the governor. The acting governor shall have the powers and duties of the office of governor only for the period during which he serves.

#### Convention Notes

New provision based on 25th amendment to U.S. Constitution. If governor dies, is disqualified, or resigns, the lieutenant governor takes his place. If governor is gone from the state more than 45 days or is temporarily disabled the lieutenant governor becomes acting governor. If the lieutenant governor and the attorney general think the governor is unable to perform his duties they may send notice to the legislature. By a two-thirds vote the

legislature can decide that the lieutenant governor shall serve as acting governor because the governor is unable to act. [See 1889 constitution Art. VII, secs. 14, 15, 16.]

#### Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 14, Art. VII of the 1889 Constitution in bound Volume One, Part 1.

**Section 15. Information for governor.** (1) The governor may require information in writing, under oath when required, from the officers of the executive branch upon any subject relating to the duties of their respective offices.

(2) He may require information in writing, under oath, from all officers and managers of state institutions.

(3) He may appoint a committee to investigate and report to him upon the condition of any executive office or state institution.

**Convention Notes**

No change except in grammar [Art. VII, sec. 10].

**Cross-References**

Annual reports to governor, secs. 82-4001, 82-4002.

**Decisions under Former Provisions**

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 10, Art. VII of the 1889 Constitution in bound Volume One, Part 1.

**ARTICLE VII****THE JUDICIARY****Section**

1. Judicial power.
2. Supreme court jurisdiction.
3. Supreme court organization.
4. District court jurisdiction.
5. Justices of the peace.
6. Judicial districts.
7. Terms and pay.
8. Selection.
9. Qualifications.
10. Forfeiture of judicial position.
11. Removal and discipline.

**Section 1. Judicial power.** The judicial power of the state is vested in one supreme court, district courts, justice courts, and such other courts as may be provided by law.

**Convention Notes**

Revises 1889 constitution [Art. VIII, sec. 1] by allowing the legislature to establish "inferior" courts, such as a small claims court, as well as intermediate courts of appeal. Reference in 1889 constitution to senate as court of impeachment is deleted.

**Cross-References**

Courts of state, sec. 93-101.  
Municipal courts, sec. 11-1701 et seq.  
Police courts, sec. 11-1601 et seq.

**Decisions under Former Provisions**

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 1, Art. VIII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

**Unification of Bar**

Supreme Court has power under this section to order unification of the bar of the state of Montana. Application of President of Montana Bar Association, — M —, 518 P 2d 32.

**Section 2. Supreme court jurisdiction.** (1) The supreme court has appellate jurisdiction and may issue, hear, and determine writs appropriate thereto. It has original jurisdiction to issue, hear, and determine writs of habeas corpus and such other writs as may be provided by law.

(2) It has general supervisory control over all other courts.

(3) It may make rules governing appellate procedure, practice and procedure for all other courts, admission to the bar and the conduct of its members. Rules of procedure shall be subject to disapproval by the legislature in either of the two sessions following promulgation.

(4) Supreme court process shall extend to all parts of the state.

**Proposed Amendment**

Chapter 420, Laws of 1977, proposes to amend this section to read as follows:  
"(1) The supreme court has appellate jurisdiction and may issue, hear, and de-

termine writs appropriate thereto. It has original jurisdiction to issue, hear, and determine writs of habeas corpus and such other writs as may be provided by law.

"(2) It has general supervisory control over all other courts.

"(3) It may make rules governing appellate procedure, practice and procedure for all other courts, admission to the bar and the conduct of its members. Rules of procedure and rules for admission to the bar shall be subject to disapproval by the legislature.

"(4) Supreme court process shall extend to all parts of the state."

The proposed amendment is to be submitted to the electors of the State of Montana at the General Election to be held in November, 1978 and, if approved by the electorate, the amendment shall be effective January 1, 1979.

#### Convention Notes

(1) No change except in grammar [Art. VIII, secs. 2, 3]. (2) No change except in grammar [Art. VIII, sec. 2]. (3) Allows Supreme Court to make rules governing itself, other courts and lawyers. Legislature may veto the rules. (4) No change except in grammar [Art. VIII, sec. 2].

**Section 3. Supreme court organization.** (1) The supreme court consists of one chief justice and four justices, but the legislature may increase the number of justices from four to six. A majority shall join in and pronounce decisions, which must be in writing.

(2) A district judge shall be substituted for the chief justice or a justice in the event of disqualification or disability, and the opinion of the district judge sitting with the supreme court shall have the same effect as an opinion of a justice.

#### Convention Notes

Only change, except in grammar, allows legislature to increase number of justices to six should the need arise [Art. VIII, sec. 5].

#### Cross-References

Concurrence of majority, sec. 93-217.

#### Cross-References

Jurisdiction of supreme court, sec. 93-213 et seq.

#### Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 2 and 3, Art. VIII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

#### Admission to Legal Practice

Legislature is not empowered to disapprove rules promulgated by the supreme court governing the admission of attorneys to practice; application of doctrine of ejusdem generis to this section does not indicate the contrary. Matter of McCabe, — M —, 544 P 2d 825.

#### Supervisory Writs

An original proceeding under subdivisions (1) and (2) of this section for a writ of supervisory control is not equivalent to an appeal. Fisher v. District Court, — US —, — L Ed 2d —, 96 S Ct 943.

#### Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 5, Art. VIII of the 1889 Constitution in bound Volume One, Part 1.

**Section 4. District court jurisdiction.** (1) The district court has original jurisdiction in all criminal cases amounting to felony and all civil matters and cases at law and in equity. It may issue all writs appropriate to its jurisdiction. It shall have the power of naturalization and such additional jurisdiction as may be delegated by the laws of the United States or the state of Montana. Its process shall extend to all parts of the state.

(2) The district court shall hear appeals from inferior courts as trials anew unless otherwise provided by law. The legislature may provide for direct review by the district court of decisions of administrative agencies.

(3) Other courts may have jurisdiction of criminal cases not amounting to felony and such jurisdiction concurrent with that of the district court as may be provided by law.



**Convention Notes**

(1) No change except in grammar [Art. VIII, sec. 11]. (2) New provision providing for appeal from lower courts and state agencies. (3) New provision which allows legislature to create other courts having the same power as district courts.

**Cross-References**

Jurisdiction of district court, sec. 93-317 et seq.

**Decisions under Former Provisions**

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 11, Art. VIII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

**Reduction of Charge**

Where information originally charged theft, a felony, but was amended to charge unauthorized use of an automobile, a lesser included misdemeanor, district court did not thereby lose its jurisdiction over the subject matter, even though the misdemeanor charge could not have been brought there in first instance. *State v. Shults*, — M —, 544 P 2d 817.

**Section 5. Justices of the peace.** (1) There shall be elected in each county at least one justice of the peace with qualifications, training, and monthly compensation provided by law. There shall be provided such facilities that they may perform their duties in dignified surroundings.

(2) Justice courts shall have such original jurisdiction as may be provided by law. They shall not have trial jurisdiction in any criminal case designated a felony except as examining courts.

(3) The legislature may provide for additional justices of the peace in each county.

**Convention Notes**

(1) Revises 1889 constitution [Art. VIII, sec. 20] by requiring one justice of the peace in each county instead of two in each township and allows legislature to set qualifications, training standards and salaries. Provision for "dignified surroundings" is new. (2) Deletes references in 1889 constitution [Art. VIII, sec. 21] to types of cases which may not be handled by a justice of the peace and provides that legislature may determine this except that they may not try felony cases. (3) No change except in grammar [Art. VIII, sec. 20].

**Cross-References**

Jurisdiction of justice courts, sec. 93-408 et seq.

**Decisions under Former Provisions**

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 20 and 21, Art. VIII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

**Authority to Issue Search Warrant**

The existing court system of Montana, whereby district judges may serve several counties, leaving outlying counties without an available district judge to issue a search warrant, supports a legislative intent to grant justices of the peace jurisdiction to issue search warrants. *State v. Snider*, — M —, 541 P 2d 1204.

**Facilities Provided Justice Courts**

This provision creates a duty on part of county commissioners to approve actual and necessary expenses of justice court, even though expense was unforeseen and not budgeted. *State ex rel. Browman v. Wood*, — M —, 543 P 2d 184.

**Section 6. Judicial districts.** (1) The legislature shall divide the state into judicial districts and provide for the number of judges in each district. Each district shall be formed of compact territory and be bounded by county lines.

(2) The legislature may change the number and boundaries of judicial districts and the number of judges in each district, but no change in boundaries or the number of districts or judges therein shall work a removal of any judge from office during the term for which he was elected or appointed.

(3) The chief justice may, upon request of the district judge, assign district judges and other judges for temporary service from one district to another, and from one county to another.

#### Convention Notes

(1) (2) No change except in grammar [Art. VIII, secs. 12, 14]. (3) New provision allowing the chief justice temporarily to assign judges to districts other than their own.

#### Cross-References

Judicial districts, sec. 93-301 et seq.

#### Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 12 and 14, Art.

VIII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

#### Disqualification of Judges

Transcript of proceedings of Montana constitutional convention indicates that framers did not intend that this section should in any way affect the present method of calling in other judges upon disqualification; thus, section 93-901(4) does not conflict with the 1972 constitution. State ex rel. Lane v. District Court, — M —, 535 P 2d 174.

**Section 7. Terms and pay.** (1) All justices and judges shall be paid as provided by law, but salaries shall not be diminished during terms of office.

(2) Terms of office shall be eight years for supreme court justices, six years for district court judges, four years for justices of the peace, and as provided by law for other judges.

#### Compiler's Notes

Section 4 of the Transition Schedule provides: "Supreme court justices, district court judges, and justices of the peace holding office when this Constitution becomes effective shall serve the terms for which they were elected or appointed."

#### Convention Notes

(1) No change except in grammar [Art. VIII, sec. 29]. (2) Supreme Court justice terms increased from six to eight years, district court judges from four to six and justices of the peace from two to four years [Art. VIII, secs. 7, 12, 20].

#### Cross-References

District court judges, salary, sec. 93-303. Justices of the peace, fees and salaries, sec. 25-301 et seq., 93-413.

Supreme court chief justice and justices, salaries, sec. 25-501.

#### Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 7, 12, 20 and 29, Art. VIII of the 1889 Constitution in bound Volume One, Part 1.

#### Salaries Shall Not Be Diminished

Under the provision of this section that judge's compensation cannot be diminished, attempts by state legislature to restrict actual and necessary travel expenses of district judges and supreme court justices are unconstitutional. Matter of Actual Necessary Expense of Judges, — M —, 541 P 2d 345.

**Section 8. Selection.** (1) The governor shall nominate a replacement from nominees selected in the manner provided by law for any vacancy in the office of supreme court justice or district court judge. If the governor fails to nominate within thirty days after receipt of nominees, the chief justice or acting chief justice shall make the nomination. Each nomination shall be confirmed by the senate, but a nomination made while the senate is not in session shall be effective as an appointment until the end of the next session. If the nomination is not confirmed, the office shall be vacant and another selection and nomination shall be made.

(2) If, at the first election after senate confirmation, and at the election before each succeeding term of office, any candidate other than the incumbent justice or district judge files for election to that office, the



name of the incumbent shall be placed on the ballot. If there is no election contest for the office, the name of the incumbent shall nevertheless be placed on the general election ballot to allow voters of the state or district to approve or reject him. If an incumbent is rejected, another selection and nomination shall be made.

(3) If an incumbent does not run, there shall be an election for the office.

#### Convention Notes

Revises 1889 constitution [Art. VIII, secs. 6, 8, 12]. Contested election of judges is not changed, however if a judge in office does not have an opponent in an election his name will be put on the ballot anyway and the people asked to approve or reject him. If rejected, the governor appoints another judge. When there is a vacancy (such as death or resignation) the governor appoints a replacement but does not have unlimited choice of lawyers as under 1889 constitution [Art. VIII, sec. 34]. He must choose his appointee from a list of nominees and the appointment must be confirmed by the senate—a new requirement.

accession to office, who is unopposed at an election preceding a term of office, must have his name placed on the ballot on a retain-reject basis, pursuant to subsection (2). *Keller v. Smith*, — M —, 553 P 2d 1002.

#### When Judge Is Incumbent

Where, due to district judge assigning the most senior district rule to Department 1, the next most senior to Department 2, and so on, the local records showed each judge occupying a different division than was shown by the secretary of state's records, which were maintained on the basis of a lineal succession of judges to any one seat, and to alleviate the confusion fostered by this situation, all the presently serving judges determined to stand for office at the 1976 election in the department for which they were shown to be incumbent by the secretary of state, with the result that no judge ran for reelection to the same seat to which he had been elected in 1972, this section nevertheless required them to be treated as incumbents and to run on a retain-reject ballot where it appeared they would be unopposed by other candidates. *Yunker v. Murray*, — M —, 554 P 2d 285.

#### Decisions under Former Provisions

For decisions relating to provisions in the 1889 Constitution, see annotations following secs. 12 and 34, Art. VIII of the 1889 Constitution in bound Volume One, Part 1.

#### Election Where Judge Unopposed

This section requires that any appointed judge who is unopposed at the election next following his confirmation, and any other judge, regardless of his mode of

**Section 9. Qualifications.** (1) A citizen of the United States who has resided in the state two years immediately before taking office is eligible to the office of supreme court justice or district court judge if admitted to the practice of law in Montana for at least five years prior to the date of appointment or election. Qualifications and methods of selection of judges of other courts shall be provided by law.

(2) No supreme court justice or district court judge shall solicit or receive compensation in any form whatever on account of his office, except salary and actual necessary travel expense.

(3) Except as otherwise provided in this constitution, no supreme court justice or district court judge shall practice law during his term of office, engage in any other employment for which salary or fee is paid, or hold office in a political party.

(4) Supreme court justices shall reside within the state. Every other judge shall reside during his term of office in the district, county, township, precinct, city or town in which he is elected or appointed.

#### Convention Notes

(1) Revises 1889 constitution [Art. VIII, secs. 10, 16] by making residency

requirements for candidates for district court judgeship the same as for supreme court and by deleting age requirements.



Requirement for five years of law practice new. (2) Revises 1889 constitution [Art. VIII, sec. 30] by specifically allowing travel expense. (3) Only change [Art. VIII, secs. 31 and 35] specifically prohibits a judge from holding office in a political party. (4) No change except in grammar [Art. VIII, sec. 33].

#### Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 16, 30, 31 and 35, Art. VIII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

#### Actual and Necessary Travel Expenses

Where state constitution states that judge's compensation cannot be diminished, attempts by state legislature to restrict actual and necessary travel expenses of district judges and supreme court justices are unconstitutional and judges are entitled to their actual and necessary expenses for subsistence and lodging and nineteen cents per mile travel expenses, when using own transportation. Matter of Actual Necessary Expense of Judges, — M —, 541 P 2d 345.

**Section 10. Forfeiture of judicial position.** Any holder of a judicial position forfeits that position by either filing for an elective public office other than a judicial position or absenting himself from the state for more than 60 consecutive days.

#### Convention Notes

New provision. A judge may not run for any other public office, or be out of state for more than 60 days. [See 1889 constitution Art. VIII, sec. 37.]

#### Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 37, Art. VIII of the 1889 Constitution in bound Volume One, Part 1.

**Section 11. Removal and discipline.** (1) The legislature shall create a judicial standards commission consisting of five persons and provide for the appointment thereto of two district judges, one attorney, and two citizens who are neither judges nor attorneys.

(2) The commission shall investigate complaints, make rules implementing this section, and keep its proceedings confidential. It may subpoena witnesses and documents.

(3) Upon recommendation of the commission, the supreme court may:

(a) Retire any justice or judge for disability that seriously interferes with the performance of his duties and is or may become permanent; or

(b) Censure, suspend, or remove any justice or judge for willful misconduct in office, willful and persistent failure to perform his duties, or habitual intemperance.

#### Convention Notes

New provision. A judicial standards commission may investigate whenever a judge, because of disability or bad habits,

does not perform his duties properly. The commission can recommend to the supreme court that the judge be retired, censured, suspended or removed.

## ARTICLE VIII

### REVENUE AND FINANCE

#### Section

1. Tax purposes.
2. Tax power inalienable.
3. Property tax administration.
4. Equal valuation.
5. Property tax exemptions.
6. Highway revenue non-diversion.

7. Tax appeals.
8. State debt.
9. Balanced budget.
10. Local government debt.
11. Use of loan proceeds.
12. Strict accountability.
13. Investment of public funds.
14. Prohibited payments.

**Section 1. Tax purposes.** Taxes shall be levied by general laws for public purposes.

**Convention Notes**

Revises 1889 constitution [Art. XII] by eliminating references to particular kinds of revenue sources (such as property taxes, license fees, and income taxes) and continues the legislative power to determine tax structures.

**Decisions under Former Provisions**

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 11, Art. XII of the

1889 Constitution in bound Volume One, Part 1, and in this supplement.

**Property Tax Assessment for School Purposes**

Property tax assessment requiring all property in Montana to be levied upon at the same rate was clearly a general law, and the legislature was free to use the proceeds for any public purpose. *State ex rel. Woodahl v. Straub*, 164 M 141, 520 P 2d 776, certiorari denied, 419 US 845, 42 L Ed 2d 73, 95 S Ct 79.

**Section 2. Tax power inalienable.** The power to tax shall never be surrendered, suspended, or contracted away.

**Convention Notes**

New section which limits the power to tax to government.

**Decisions under Former Provisions**

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 7, Art. XII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

**Section 3. Property tax administration.** The state shall appraise, assess, and equalize the valuation of all property which is to be taxed in the manner provided by law.

**Convention Notes**

Revises 1889 constitution [Art. XII, sec. 15] by removing references to county boards of equalization and state board of equalization leaving the legislature free to determine the method of securing property tax equalization.

purposes. *Montana Nat. Bank of Round-up v. State Department of Revenue*, — M —, 539 P 2d 722.

**Uniformity of Taxation**

Property appraisal plan calling for cyclical re-evaluation of property every five years, which established differing cycles for each county in the state, was not thereby unconstitutional or unlawful for failure to provide a uniform statewide method of appraisal, since the plan merely took into account the varying lengths of time since the last appraisal of various kinds of property in the different counties; though implementation of the plan might result in some inequality, no violation of the constitution or applicable statutes would result unless there was intentional or systematic discrimination, constructive fraud, or arbitrary action. *Patterson v. State, Department of Revenue*, — M —, 557 P 2d 798.

**Cross-References**

Classification of property for taxation, sec. 84-301.

**Decisions under Former Provisions**

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 15, Art. XII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

**Determination of Accounting Method**

This section when taken together with section 84-708.1(3) allows the department of revenue to determine what method of valuation shall be used for tax assessment

**Section 4. Equal valuation.** All taxing jurisdictions shall use the assessed valuation of property established by the state.

**Convention Notes**

No change except in grammar [Art. XII, sec. 5]. Guarantees the same assessed value will be used by all taxing authorities.

**Decisions under Former Provisions**

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 5, Art. XII of the 1889 Constitution in bound Volume One, Part 1.

**Section 5. Property tax exemptions.** (1) The legislature may exempt from taxation:

(a) Property of the United States, the state, counties, cities, towns, school districts, municipal corporations, and public libraries, but any private interest in such property may be taxed separately.

(b) Institutions of purely public charity, hospitals and places of burial not used or held for private or corporate profit, places for actual religious worship, and property used exclusively for educational purposes.

(c) Any other classes of property.

(2) The legislature may authorize creation of special improvement districts for capital improvements and the maintenance thereof. It may authorize the assessment of charges for such improvements and maintenance against tax exempt property directly benefited thereby.

**Convention Notes**

1889 constitution [Art. XII, sec. 2] makes it mandatory that all property listed in subsection (1) (a) be exempt from taxation. Revision leaves all exemptions at discretion of legislature. Specifically permits taxation of private interests in government-owned property and assessment of special improvement district charges on tax exempt property.

**Cross-References**

Exemptions from taxation, sec. 84-202.

**Decisions under Former Provisions**

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 2, Art. XII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

**Section 6. Highway revenue non-diversion.** (1) Revenue from gross vehicle weight fees and excise and license taxes (except general sales and use taxes) on gasoline, fuel, and other energy sources used to propel vehicles on public highways shall be used as authorized by the legislature, after deduction of statutory refunds and adjustments, solely for:

(a) Payment of obligations incurred for construction, reconstruction, repair, operation, and maintenance of public highways, streets, roads, and bridges.

(b) Payment of county, city, and town obligations on streets, roads, and bridges.

(c) Enforcement of highway safety, driver education, tourist promotion, and administrative collection costs.

(2) Such revenue may be appropriated for other purposes by a three-fifths vote of the members of each house of the legislature.

**Convention Notes**

Revises 1956 amendment to the 1889 constitution [Art. XII, sec. 1b] by removing motor vehicle registration fees from the earmarking provision; by including local government road and street

systems, highway safety programs and driver education programs as permissible uses of earmarked funds; and by allowing the legislature by a three-fifths vote to divert the earmarked funds to other purposes.



**Decisions under Former Provisions**

For decisions relating to similar provisions in the 1889 Constitution, see annotations under sec. 1 b, Art. XII of the 1889 Constitution in this supplement.

**Section 7. Tax appeals.** The legislature shall provide independent appeal procedures for taxpayer grievances about appraisals, assessments, equalization, and taxes. The legislature shall include a review procedure at the local government unit level.

**Convention Notes**

New provision requiring the legislature to establish procedures for taxpayer appeals. Appeal procedures must include an opportunity to have the complaint heard at the local level.

**Section 8. State debt.** No state debt shall be created unless authorized by a two-thirds vote of the members of each house of the legislature or a majority of the electors voting thereon. No state debt shall be created to cover deficits incurred because appropriations exceeded anticipated revenue.

**Convention Notes**

Revises 1889 constitution [Art. XIII, sec. 2] by replacing obsolete \$100,000 limit on state debt with provision that only a 2/3 vote of the legislature or majority vote at an election may create state debt.

**Section 9. Balanced budget.** Appropriations by the legislature shall not exceed anticipated revenue.

**Convention Notes**

No change except in grammar [Art. XII, sec. 12]. Requires legislature to stay within estimated revenue limits when appropriating funds.

**Section 10. Local government debt.** The legislature shall by law limit debts of counties, cities, towns, and all other local governmental entities.

**Convention Notes**

Revises 1889 constitution [Art. XIII, secs. 5, 6]. Debt limitations for all local governmental entities will be set by law rather than by the constitution.

**Cross-References**

County indebtedness, limit, sec. 16-807.

**Section 11. Use of loan proceeds.** All money borrowed by or on behalf of the state or any county, city, town, or other local governmental entity shall be used only for purposes specified in the authorizing law.

**Convention Notes**

No change except in grammar [Art. XIII, sec. 3].

**Decisions under Former Provisions**

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 15, Art. XII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

**Decisions under Former Provisions**

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 2, Art. XIII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

**Decisions under Former Provisions**

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 12, Art. XII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Municipal indebtedness, limit, secs. 11-966, 11-2303.

**Decisions under Former Provisions**

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 5 and 6, Art. XIII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

**Decisions under Former Provisions**

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 3, Art. XIII of the 1889 Constitution in bound Volume One, Part 1.

**Section 12. Strict accountability.** The legislature shall by law insure strict accountability of all revenue received and money spent by the state and counties, cities, towns, and all other local governmental entities.

**Proposed Amendment**

Chapter 392, Laws of 1977, proposes to amend this section to read as follows: "The legislature shall by law insure strict accountability of all revenue received and money spent by the state and counties, cities, towns, and all other local governmental entities. In order to insure strict accountability, the legislature shall establish by law a committee comprised of members of both houses of the legislature which may, between sessions of the legislature, approve or disapprove for expenditure by any institution or agency of the state funds which were not available for consideration by the legislature."

The proposed amendment is to be submitted to the electors of the State of Montana at the general election to be held November 7, 1978 and, if approved by the electorate, the amendment will be effective January 1, 1979.

**Convention Notes**

Revises 1889 constitution [Art. XII, sec.

13] by leaving specific details of accounting procedures, reporting requirements, etc. to the legislature.

**Decisions under Former Provisions**

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 13, Art. XII of the 1889 Constitution in bound Volume One, Part 1.

**Information Required of Executive Branch**

Sections 43-1114 and 43-1115, requiring state agencies to furnish budget information, do not impose unconstitutional burden upon state government, since power to approve appropriation bills and budget is in legislative branch, and committee may require such information from other branches as is reasonably necessary to form rational basis for budget determinations. State ex rel. Judge v. Legislative Finance Committee, — M —, 543 P 2d 1317.

**Section 13. Investment of public funds.** (1) The legislature shall provide for a unified investment program for public funds and provide rules therefor, including supervision of investment of surplus funds of all counties, cities, towns, and other local governmental entities. Each fund forming a part of the unified investment program shall be separately identified. Except for monies contributed to retirement funds, no public funds shall be invested in private corporate capital stock. The investment program shall be audited at least annually and a report thereof submitted to the governor and legislature.

(2) The public school fund and the permanent funds of the Montana university system and all other state institutions of learning shall be safely and conservatively invested in:

(a) Public securities of the state, its subdivisions, local government units, and districts within the state, or

(b) Bonds of the United States or other securities fully guaranteed as to principal and interest by the United States, or

(c) Such other safe investments bearing a fixed rate of interest as may be provided by law.

**Convention Notes**

Revises 1889 constitution [Art. XXI] by providing for a unified investment program for all state funds. Allows retirement funds to be invested in private corporate stock, but provides that the public school fund and university system funds may be invested only in interest bearing securities.

**Cross-References**

Board of investments, creation, transfer of investment functions, sec. 82A-204.

**Decisions under Former Provisions**

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 1, 8 and 17, Art. XXI of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

**Section 14. Prohibited payments.** Except for interest on the public debt, no money shall be paid out of the treasury unless upon an appropriation made by law and a warrant drawn by the proper officer in pursuance thereof.

**Convention Notes**

No change except in grammar [Art. V, sec. 34 and Art. XII, sec. 10].

**Decisions under Former Provisions**

For decisions relating to similar provi-

sions in the 1889 Constitution, see annotations following sec. 34, Art. V, and following sec. 10, Art. XII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

## ARTICLE IX

### ENVIRONMENT AND NATURAL RESOURCES

**Section**

1. Protection and improvement.
2. Reclamation.
3. Water rights.
4. Cultural resources.
5. Severance tax on coal—trust fund.

**Section 1. Protection and improvement.** (1) The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations.

(2) The legislature shall provide for the administration and enforcement of this duty.

(3) The legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

**Convention Notes**

New provision creating a duty of the state and its people to protect and improve the environment.

**Cross-References**

Environmental Policy Act, secs. 69-6501 et seq.

Fish and game department, creation, sec. 82A-2001.

Health and environmental sciences, department created, sec. 82A-601.

Natural resources and conservation, department created, sec. 82A-1501.

State lands, department created, sec. 82A-1101.

**Section 2. Reclamation.** (1) All lands disturbed by the taking of natural resources shall be reclaimed. The legislature shall provide effective requirements and standards for the reclamation of lands disturbed.

(2) The legislature shall provide for a fund, to be known as the resource indemnity trust of the state of Montana, to be funded by such taxes on the extraction of natural resources as the legislature may from time to time impose for that purpose.

(3) The principal of the resource indemnity trust shall forever remain inviolate in an amount of one hundred million dollars (\$100,000,000), guaranteed by the state against loss or diversion.

**Compiler's Notes**

Amendment proposed by Chapter 117, Laws 1974, adopted at the general election of November 5, 1974, effective July 1, 1975. The amendment inserted subsec-

tion designation "(1)" and added the provisions of subsections (2) and (3).

**Convention Notes**

New provision requiring restoration of land after removal of natural resources.



**Cross-References**

Open-cut mining lands, reclamation, secs. 50-1501 to 50-1516.

Strip-mining lands, reclamation, secs. 50-1034 to 50-1057.

Surface and underground mining lands, reclamation, secs. 50-1201 to 50-1224.

**Section 3. Water rights.** (1) All existing rights to the use of any waters for any useful or beneficial purpose are hereby recognized and confirmed.

(2) The use of all water that is now or may hereafter be appropriated for sale, rent, distribution, or other beneficial use, the right of way over the lands of others for all ditches, drains, flumes, canals, and aqueducts necessarily used in connection therewith, and the sites for reservoirs necessary for collecting and storing water shall be held to be a public use.

(3) All surface, underground, flood, and atmospheric waters within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law.

(4) The legislature shall provide for the administration, control, and regulation of water rights and shall establish a system of centralized records, in addition to the present system of local records.

**Convention Notes**

(1) New provision guaranteeing all existing rights to the use of water. (2) No change except in grammar [Art. III, sec. 15]. (3) New provision recognizing state ownership of all water subject to use and appropriation by its people. (4) New provision requiring legislature to pass laws establishing a central records system so that records of water rights may be found in a single location as well as locally.

**Cross-References**

Centralized records of water rights, secs. 89-865 to 89-8-102.

**Decisions under Former Provisions**

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 15, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

**Preservation of Existing Rights**

Plaintiff who had filed petition for appropriation before repeal of the former water law had an existing right in the priority of his application, which was preserved by subdivision (1) of this section and by section 6(2) of the Transition Schedule of the 1972 constitution. General Agriculture Corp. v. Moore, — M —, 534 P 2d 859.

**Section 4. Cultural resources.** The legislature shall provide for the identification, acquisition, restoration, enhancement, preservation, and administration of scenic, historic, archeologic, scientific, cultural, and recreational areas, sites, records and objects, and for their use and enjoyment by the people.

**Convention Notes**

New provision. Self-explanatory.

**Section 5. Severance tax on coal—trust fund.** The legislature shall dedicate not less than one-fourth ( $\frac{1}{4}$ ) of the coal severance tax to a trust fund, the interest and income from which may be appropriated. The principal of the trust shall forever remain inviolate unless appropriated by vote of three-fourths ( $\frac{3}{4}$ ) of the members of each house of the legislature. After December 31, 1979, at least fifty percent (50%) of the severance tax shall be dedicated to the trust fund.

**Compiler's Notes**

New section proposed by Chapter 499, Laws 1975, adopted at the general election

of November 2, 1976, effective July 1, 1977.

## ARTICLE X

## EDUCATION AND PUBLIC LANDS

## Section

1. Educational goals and duties.
2. Public school fund.
3. Public school fund inviolate.
4. Board of land commissioners.
5. Public school fund revenue.
6. Aid prohibited to sectarian schools.
7. Non-discrimination in education.
8. School district trustees.
9. Boards of education.
10. State university funds.
11. Public land trust, disposition.

**Section 1. Educational goals and duties.** (1) It is the goal of the people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state.

(2) The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity.

(3) The legislature shall provide a basic system of free quality public elementary and secondary schools. The legislature may provide such other educational institutions, public libraries, and educational programs as it deems desirable. It shall fund and distribute in an equitable manner to the school districts the state's share of the cost of the basic elementary and secondary school system.

**Convention Notes**

Revises 1889 Constitution [Art. XI, secs. 1, 6, 7]. Expresses the goal of the State to educate all of its citizens regardless of their ages. Creates a right to equal educational opportunity and specifically recognizes unique heritage of Indians.

**Decisions under Former Provisions**

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 1, 6 and 7, Art. XI of the 1889 Constitution in bound

Volume One, Part 1, and in this supplement.

**School Funding through Property Tax**

Although the legislature has traditionally provided for the cost of public instruction from oil and gas royalties or income taxes or corporation taxes, it is not unconstitutional to provide for such costs through the levy of a state side property tax. *State ex rel. Woodahl v. Straub*, 164 M 141, 520 P 2d 776, certiorari denied, 419 US 845, 42 L Ed 2d 73, 95 S Ct 79.

**Section 2. Public school fund.** The public school fund of the state shall consist of: (1) Proceeds from the school lands which have been or may hereafter be granted by the United States,

(2) Lands granted in lieu thereof,

(3) Lands given or granted by any person or corporation under any law or grant of the United States,

(4) All other grants of land or money made from the United States for general educational purposes or without special purpose,

(5) All interests in estates that escheat to the state,

(6) All unclaimed shares and dividends of any corporation incorporated in the state,

(7) All other grants, gifts, devises or bequests made to the state for general educational purposes.

#### Convention Notes

No change except in grammar [Art. XI, sec. 2]. Gives constitutional recognition to the public school fund.

#### Cross-References

Public school fund, sec. 75-7301 et seq.

#### Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 2, Art. XI of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

**Section 3. Public school fund inviolate.** The public school fund shall forever remain inviolate, guaranteed by the state against loss or diversion.

#### Convention Notes

No change except in grammar [Art. XI, sec. 3].

#### Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 3, Art. XI of the 1889 Constitution in bound Volume One, Part 1.

**Section 4. Board of land commissioners.** The governor, superintendent of public instruction, auditor, secretary of state, and attorney general constitute the board of land commissioners. It has the authority to direct, control, lease, exchange, and sell school lands and lands which have been or may be granted for the support and benefit of the various state educational institutions, under such regulations and restrictions as may be provided by law.

#### Convention Notes

Revises 1889 constitution [Art. XI, sec. 4] by adding state auditor to board of land commissioners and adding the power to exchange lands.

#### Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 4, Art. XI of the 1889 Constitution in bound Volume One, Part 1.

#### Cross-References

Powers and duties of board of land commissioners, sec. 81-103.

**Section 5. Public school fund revenue.** (1) Ninety-five percent of all the interest received on the public school fund and ninety-five percent of all rent received from the leasing of school lands and all other income from the public school fund shall be equitably apportioned annually to public elementary and secondary school districts as provided by law.

(2) The remaining five percent of all interest received on the public school fund, and the remaining five percent of all rent received from the leasing of school lands and all other income from the public school fund shall annually be added to the public school fund and become and forever remain an inseparable and inviolable part thereof.

#### Convention Notes

Revises 1889 constitution [Art. XI, sec. 5] by replacing specific language requiring distribution to be made "in proportion to the number of children between ages

of 6 and 21" with general language that the income be "equitably apportioned" and by allowing distribution of interest and income moneys to high schools as well as elementary schools.



**Cross-References**

Apportionment from fund, sec. 75-6908.

**Decisions under Former Provisions**

For decisions relating to similar pro-

visions in the 1889 Constitution, see annotations following sec. 5, Art. XI of the 1889 Constitution in bound Volume One, Part 1.

**Section 6. Aid prohibited to sectarian schools.** (1) The legislature, counties, cities, towns, school districts, and public corporations shall not make any direct or indirect appropriation or payment from any public fund or monies, or any grant of lands or other property for any sectarian purpose or to aid any church, school, academy, seminary, college, university, or other literary or scientific institution, controlled in whole or in part by any church, sect, or denomination.

(2) This section shall not apply to funds from federal sources provided to the state for the express purpose of distribution to non-public education.

**Convention Notes**

Revises 1889 constitution [Art. XI, sec. 8] by specifying that federal funds may

be distributed to private schools. Proposed section still prohibits state aid to private schools.

**Section 7. Non-discrimination in education.** No religious or partisan test or qualification shall be required of any teacher or student as a condition of admission into any public educational institution. Attendance shall not be required at any religious service. No sectarian tenets shall be advocated in any public educational institution of the state. No person shall be refused admission to any public educational institution on account of sex, race, creed, religion, political beliefs, or national origin.

**Convention Notes**

Last sentence revises 1889 constitution [Art. XI, sec. 9] (which merely forbade denying any person entrance to a university because of his or her sex) by broadening the language to include all public educational institutions and to include other kinds of discrimination. Other changes in grammar only.

**Decisions under Former Provisions**

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 8, Art. XI of the 1889 Constitution in this supplement.

**Section 8. School district trustees.** The supervision and control of schools in each school district shall be vested in a board of trustees to be elected as provided by law.

**Convention Notes**

New provision which guarantees control of schools to local boards. Deletes requirement in 1889 constitution [Art. XI, sec. 10] that elections for school district officers must be separate from state and county elections.

trustees to reach a settlement, but only requires a good faith effort, and the final decision for teachers' contracts must rest with the board. State ex rel. Billings Education Assn. v. District Court, — M —, 531 P 2d 685.

**Cross-References**

School district trustees, sec. 75-5901 et seq.

**Negotiation of Master Agreement**

The professional negotiations act for teachers does not require the board of

**Purpose**

In including this section within the constitution, the delegates were primarily concerned with the preservation of theretofore existing local school board powers, not with the expansion of local control and power. School District No. 12, Phillips County v. Hughes, — M —, 552 P 2d 328.

**Section 9. Boards of education.** (1) There is a state board of education composed of the board of regents of higher education and the board of public education. It is responsible for long-range planning, and for coordinating and evaluating policies and programs for the state's educational systems. It shall submit unified budget requests. A tie vote at any meeting may be broken by the governor, who is an ex officio member of each component board.

(2) (a) The government and control of the Montana university system is vested in a board of regents of higher education which shall have full power, responsibility, and authority to supervise, coordinate, manage and control the Montana university system and shall supervise and coordinate other public educational institutions assigned by law.

(b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms, as provided by law. The governor and superintendent of public instruction are ex officio non-voting members of the board.

(c) The board shall appoint a commissioner of higher education and prescribe his term and duties.

(d) The funds and appropriations under the control of the board of regents are subject to the same audit provisions as are all other state funds.

(3) (a) There is a board of public education to exercise general supervision over the public school system and such other public educational institutions as may be assigned by law. Other duties of the board shall be provided by law.

(b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms as provided by law. The governor, commissioner of higher education and state superintendent of public instruction shall be ex officio non-voting members of the board.

#### Convention Notes

Revises 1889 constitution [Art. XI, sec. 11] by creating one board (Board of Public Education) to supervise the public school system and a separate board (Board of Regents of Higher Education) to supervise the university system. The two boards together form one board (Board of Education) for considering mutual problems. Under 1889 constitution there is just one board to supervise the entire educational system. Each of the two proposed boards consists of 7 persons appointed by the governor (one less than in 1889 constitution). The governor and superintendent are ex officio, non-voting members (the attorney general is an ex officio member in 1889 constitution).

#### Cross-References

Division of powers among boards, sec. 75-5617.

State board of education and component boards, secs. 75-5609 to 75-5619.

#### Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 11, Art. XI of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

#### Power of Regents

Since board of regents is the competent body for determining priorities in higher education and an important priority is hiring and keeping competent personnel, appropriations bill which controlled salaries of university employees was unconstitutional by denying the board power to function effectively by setting its own personnel policies and determining its own priorities. Board of Regents of Higher Education v. Judge, — M —, 543 P 2d 1323.

#### Vocational Education

Where statute (section 75-7702) designated state board of education as state

board of vocational education, it contravened intent of state constitution of 1972, which intended vocational education to be responsibility of board of public education, and statute was unconstitutional. Board of Public Education v. Judge, — M —, 538 P 2d 11.

**Section 10. State university funds.** The funds of the Montana university system and of all other state institutions of learning, from whatever source accruing, shall forever remain inviolate and sacred to the purpose for which they were dedicated. The various funds shall be respectively invested under such regulations as may be provided by law, and shall be guaranteed by the state against loss or diversion. The interest from such invested funds, together with the rent from leased lands or properties, shall be devoted to the maintenance and perpetuation of the respective institutions.

#### Convention Notes

No change except in grammar [Art. XI, sec. 12]. (Section 13 of Article VIII, REVENUE AND FINANCE provides for the investment of university funds.)

#### Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 12, Art. XI of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

**Section 11. Public land trust, disposition.** (1) All lands of the state that have been or may be granted by congress, or acquired by gift or grant or devise from any person or corporation, shall be public lands of the state. They shall be held in trust for the people, to be disposed of as hereafter provided, for the respective purposes for which they have been or may be granted, donated or devised.

(2) No such land or any estate or interest therein shall ever be disposed of except in pursuance of general laws providing for such disposition, or until the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the state.

(3) No land which the state holds by grant from the United States which prescribes the manner of disposal and minimum price shall be disposed of except in the manner and for at least the price prescribed without the consent of the United States.

(4) All public land shall be classified by the board of land commissioners in a manner provided by law. Any public land may be exchanged for other land, public or private, which is equal in value and, as closely as possible, equal in area.

#### Convention Notes

Only changes in subsections (1), (2) and (3) are in grammar. Subsection (4) revises 1889 constitution by deleting the 1889 constitutional classification of property into grazing, timber, agricultural or city lands and by stipulating that public lands may be exchanged. [Art. XVII, secs. 1, 2, 3.]

#### Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 1 and 2, Art. XVII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.



## ARTICLE XI

### LOCAL GOVERNMENT

#### Section

1. Definition.
2. Counties.
3. Forms of government.
4. General powers.
5. Self-government charters.
6. Self-government powers.
7. Intergovernmental cooperation.
8. Initiative and referendum.
9. Voter review of local government.

**Section 1. Definition.** The term "local government units" includes, but is not limited to, counties and incorporated cities and towns. Other local government units may be established by law.

#### Convention Notes

New provision defining the term "local government unit" to include counties, cities and towns.

**Section 2. Counties.** The counties of the state are those that exist on the date of ratification of this constitution. No county boundary may be changed or county seat transferred until approved by a majority of those voting on the question in each county affected.

#### Convention Notes

Revises 1889 constitution [Art. XVI, sec. 2] by requiring only **majority of those voting** to approve county seat or boundary changes. 1889 constitution requires **majority of qualified electors**. [See also 1889 constitution Art. XVI, sec. 1.]

Removal of county seat, sec. 16-301 et seq.

#### Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 1 and 2, Art. XVI of the 1889 Constitution in bound Volume One, Part 1.

#### Cross-References

County boundaries, sec. 16-201 et seq.

**Section 3. Forms of government.** (1) The legislature shall provide methods for governing local government units and procedures for incorporating, classifying, merging, consolidating, and dissolving such units, and altering their boundaries. The legislature shall provide such optional or alternative forms of government that each unit or combination of units may adopt, amend, or abandon an optional or alternative form by a majority of those voting on the question.

(2) One optional form of county government includes, but is not limited to, the election of three county commissioners, a clerk and recorder, a clerk of district court, a county attorney, a sheriff, a treasurer, a surveyor, a county superintendent of schools, an assessor, a coroner, and a public administrator. The terms, qualifications, duties, and compensation of those offices shall be provided by law. The Board of county commissioners may consolidate two or more such offices. The Boards of two or more counties may provide for a joint office and for the election of one official to perform the duties of any such office in those counties.

**Convention Notes**

New provision directing legislature to provide alternative forms of city and county or city-county governments, one of which must be the "traditional" form including the elected officials listed. Two or more counties may agree to elect one official to serve a multicounty area. Offices within counties are subject to con-

solidation. [See Art. XVI, secs. 4, 5, 6, 7, 8.]

**Decisions under Former Provisions**

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 4 to 7, Art. XVI of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

**Section 4. General powers.** (1) A local government unit without self-government powers has the following general powers:

(a) An incorporated city or town has the powers of a municipal corporation and legislative, administrative, and other powers provided or implied by law.

(b) A county has legislative, administrative, and other powers provided or implied by law.

(c) Other local government units have powers provided by law.

(2) The powers of incorporated cities and towns and counties shall be liberally construed.

**Convention Notes**

New provision allowing legislature to grant legislative, administrative and other powers to local government units.

**Section 5. Self-government charters.** (1) The legislature shall provide procedures permitting a local government unit or combination of units to frame, adopt, amend, revise, or abandon a self-government charter with the approval of a majority of those voting on the question. The procedures shall not require approval of a charter by a legislative body.

(2) If the legislature does not provide such procedures by July 1, 1975, they may be established by election either:

(a) Initiated by petition in the local government unit or combination of units; or

(b) Called by the governing body of the local government unit or combination of units.

(3) Charter provisions establishing executive, legislative, and administrative structure and organization are superior to statutory provisions.

**Convention Notes**

New provision directing legislature to pass laws concerning procedures for local voters to design their own forms of government (self-government charters). The charter provisions concerning structure of

local governments would take precedence over general laws on such matters.

**Cross-References**

County government, alternative forms, secs. 16-5001 to 16-5019.

**Section 6. Self-government powers.** A local government unit adopting a self-government charter may exercise any power not prohibited by this constitution, law, or charter. This grant of self-government powers may be extended to other local government units through optional forms of government provided for in section 3.

**Convention Notes**

New provision allowing local government units to share powers with the state

and to have all powers not specifically denied. At present local governments have only those powers specifically granted.

**Inconsistent State Laws**

Local government did not have the inherent power to enact an anti-obscenity ordinance more stringent than the state's anti-obscenity law despite a provision in

the state law expressly invalidating local ordinances in conflict with it. U.S. Mfg. & District Corp. v. City of Great Falls, — M —, 546 P 2d 522.

**Section 7. Intergovernmental cooperation.** (1) Unless prohibited by law or charter, a local government unit may

- (a) cooperate in the exercise of any function, power, or responsibility with,
- (b) share the services of any officer or facilities with,
- (c) transfer or delegate any function, power, responsibility, or duty of any officer to one or more other local government units, school districts, the state, or the United States.

(2) The qualified electors of a local government unit may, by initiative or referendum, require it to do so.

**Convention Notes**

New provision allowing local governments to share services and functions

with other units of government, the state and the United States.

**Section 8. Initiative and referendum.** The legislature shall extend the initiative and referendum powers reserved to the people by the constitution to the qualified electors of each local government unit.

**Convention Notes**

New provision directing legislature to give residents the power to initiate local ordinances by petition or to petition to vote on ordinances passed by local governments.

**Cross-References**

County initiative and referendum, secs. 37-301 to 37-311.

Municipal initiative and referendum, secs. 11-1104 to 11-1114.

Reservation of powers of initiative and referendum, 1972 Const. Art. V, sec. 1.

**Section 9. Voter review of local government.** (1) The legislature shall, within four years of the ratification of this constitution, provide procedures requiring each local government unit or combination of units to review its structure and submit one alternative form of government to the qualified electors at the next general or special election.

(2) The legislature shall require a review procedure once every ten years after the first election.

**Proposed Amendment**

Chapter 70, Laws of 1977, proposes to amend this section to read as follows: "(1) The legislature shall, within four years of the ratification of this constitution, provide procedures requiring each local government unit or combination of units to review its structure and submit one alternative form of government to the qualified electors at the next general or special election.

"(2) The legislature shall require an election in each local government to determine whether a local government will undertake a review procedure once every ten years after the first election. Approval by a majority of those voting in the

decennial general election on the question of undertaking a local government review is necessary to mandate the election of a local government study commission. Study commission members shall be elected during any regularly scheduled election in local governments mandating their election."

The proposed amendment is to be submitted to the electors of the state of Montana at the general election to be held November 7, 1978.

Section 2 of Ch. 70, Laws 1977, provides: "If not already implemented, the legislature shall implement this amendment with appropriate legislation in 1979, in order that the electors of each local



government may indicate their preference 'For' or 'Against' the establishment of a study commission in 1984."

#### Convention Notes

New provision. By 1976 the legislature

must give local residents the opportunity to vote on whether or not to change their form of government. Laws must be passed requiring local forms of government to be studied and evaluated every ten years.

## ARTICLE XII

### DEPARTMENTS AND INSTITUTIONS

#### Section

1. Agriculture.
2. Labor.
3. Institutions and assistance.

**Section 1. Agriculture.** (1) The legislature shall provide for a Department of Agriculture and enact laws and provide appropriations to protect, enhance, and develop all agriculture.

(2) Special levies may be made on livestock and on agricultural commodities for disease control and indemnification, predator control, and livestock and commodity inspection, protection, research, and promotion. Revenue derived shall be used solely for the purposes of the levies.

#### Convention Notes

(1) Revises 1889 constitution [Art. XVIII, sec. 1]. Provides that a department of agriculture will be one of the 20 departments in the executive branch. Deletes reference to a commissioner of agriculture. Directs legislature to provide money for agriculture. (2) Revises 1889 constitution [Art. XII, sec. 9] by extending the special mill levy on livestock to agriculture to be used for the benefit of both. Deletes reference to maximum levy allowed.

#### Cross-References

Department of agriculture, creation, sec. 82A-301.

#### Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 1, Art. XVIII of the 1889 Constitution in bound Volume One, Part 1.

**Section 2. Labor.** (1) The legislature shall provide for a Department of Labor and Industry, headed by a Commissioner appointed by the governor and confirmed by the senate.

(2) A maximum period of 8 hours is a regular day's work in all industries and employment except agriculture and stock raising. The legislature may change this maximum period to promote the general welfare.

#### Convention Notes

2. No change except in grammar [Art. XVIII, secs. 1, 4]. Provides that department of labor will be one of the 20 departments in the executive branch.

#### Cross-References

Department of labor and industry, creation, commissioner, sec. 82A-1001.

#### Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 1 and 4, Art. XVIII of the 1889 Constitution in bound Volume One, Part 1.

**Section 3. Institutions and assistance.** (1) The state shall establish and support institutions and facilities as the public good may require, including homes which may be necessary and desirable for the care of veterans.

(2) Persons committed to any such institutions shall retain all rights except those necessarily suspended as a condition of commitment. Suspended rights are restored upon termination of the state's responsibility.

(3) The legislature shall provide such economic assistance and social and rehabilitative services as may be necessary for those inhabitants who, by reason of age, infirmities, or misfortune may have need for the aid of society.

#### Convention Notes

(1) No change except in grammar [Art. X, sec. 1]. (Deletes references to specific types of institutions.) (2) New provision that a person in an institution may exercise all rights except those that are impossible because of the confinement and that all rights are automatically restored when the person is released. (3) Revises 1889 constitution [Art. X, sec. 5] which states that the "several counties" must provide welfare. Revision leaves it up to the legislature to determine whether the state, county or a combination of the two must provide welfare.

#### Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 1 and 5, Art. X of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

#### Local Zoning Ordinances

Sections 11-2702.2, 71-2001, and 71-2401, which provide for developmentally disabled individuals to live and develop within community structure as family unit are constitutional and supersede such city ordinances that restrict use of residential areas to one-family dwellings only. State ex rel. Thelen v. City of Missoula, — M —, 543 P 2d 173.

## ARTICLE XIII

### GENERAL PROVISIONS

#### Section

1. Non-municipal corporations.
2. Consumer counsel.
3. Salary commission.
4. Code of ethics.
5. Exemption laws.
6. Perpetuities.

**Section 1. Non-municipal corporations.** (1) Corporate charters shall be granted, modified, or dissolved only pursuant to general law.

(2) The legislature shall provide protection and education for the people against harmful and unfair practices by either foreign or domestic corporations, individuals, or associations.

(3) The legislature shall pass no law retrospective in its operations which imposes on the people a new liability in respect to transactions or considerations already passed.

#### Convention Notes

(1) No change except in grammar [Art. XV, sec. 2]. (2) New provision requiring the legislature to pass consumer protection laws. (3) New provision prohibiting laws which would add liabilities to past contracts.

#### Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 2, 13 and 20, Art. XV of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

#### Cross-References

Corporations, Title 15.

**Section 2. Consumer counsel.** The legislature shall provide for an office of consumer counsel which shall have the duty of representing con-

sumer interests in hearings before the public service commission or any other successor agency. The legislature shall provide for the funding of the office of consumer counsel by a special tax on the net income or gross revenues of regulated companies.

#### Convention Notes

New provision requiring legislature to create a state office to represent customers at hearings before the public service com-

mission. Utility companies would be taxed to support the office.

#### Cross-References

Consumer counsel, secs. 70-701 to 70-709.

**Section 3. Salary commission.** The legislature shall create a salary commission to recommend compensation for the judiciary and elected members of the legislative and executive branches.

#### Convention Notes

New provision requiring legislature to create a committee which would suggest salary schedules for judges, legislators and executive officials.

#### Cross-References

Salary commission, secs. 59-1401 to 59-1404.

**Section 4. Code of ethics.** The legislature shall provide a code of ethics prohibiting conflict between public duty and private interest for members of the legislature and all state and local officers and employees.

#### Convention Notes

New provision. The legislature must enact laws concerning conflict of interest

involving legislators and other public officials.

**Section 5. Exemption laws.** The legislature shall enact liberal homestead and exemption laws.

#### Convention Notes

Identical to 1889 Constitution [Art. XIX, sec. 4].

Property exempt from execution, sec. 93-5813 et seq.

#### Cross-References

Earnings exempt from execution, sec. 93-5816 et seq.  
Homesteads, sec. 33-101 et seq.

#### Decisions under Former Provisions

For decisions relating to identical provisions in the 1889 Constitution, see annotations following sec. 4, Art. XIX of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

**Section 6. Perpetuities.** No perpetuities shall be allowed except for charitable purposes.

#### Convention Notes

Identical to 1889 Constitution [Art. XIX, sec. 5].

#### Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 5, Art. XIX of the 1889 Constitution in bound Volume One, Part 1.

#### Cross-References

Rule against perpetuities, secs. 67-406, 67-407.

## ARTICLE XIV

### CONSTITUTIONAL REVISION

#### Section

1. Constitutional convention.
2. Initiative for constitutional convention.
3. Periodic submission.
4. Call of convention.
5. Convention expenses.



6. Oath, vacancies.
7. Convention duties.
8. Amendment by legislative referendum.
9. Amendment by initiative.
10. Petition signers.
11. Submission.

**Section 1. Constitutional convention.** The legislature, by an affirmative vote of two-thirds of all the members, whether one or more bodies, may at any time submit to the qualified electors the question of whether there shall be an unlimited convention to revise, alter, or amend this constitution.

**Convention Notes**

Adds word "unlimited" to 1889 constitution [Art. XIX, sec. 8]. Makes it clear that the legislature cannot call a constitutional convention for limited purpose.

**Decisions under Former Provisions**

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 8, Art. XIX of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

**Section 2. Initiative for constitutional convention.** (1) The people may by initiative petition direct the secretary of state to submit to the qualified electors the question of whether there shall be an unlimited convention to revise, alter, or amend this constitution. The petition shall be signed by at least ten percent of the qualified electors of the state. That number shall include at least ten percent of the qualified electors in each of two-fifths of the legislative districts.

(2) The secretary of state shall certify the filing of the petition in his office and cause the question to be submitted at the next general election.

**Convention Notes**

New provision. Enables people to petition to call a constitutional convention.

**Cross-References**

Initiative and referendum provisions of Article III not applicable to constitutional revision, Const. Art. III, sec. 8.

Initiative petition for constitutional convention, secs. 37-201, 37-203.

**Section 3. Periodic submission.** If the question of holding a convention is not otherwise submitted during any period of 20 years, it shall be submitted as provided by law at the general election in the twentieth year following the last submission.

**Convention Notes**

New provision. The question of holding a constitutional convention must be sub-

mitted to vote of the people at least once every 20 years.

**Section 4. Call of convention.** If a majority of those voting on the question answer in the affirmative, the legislature shall provide for the calling thereof at its next session. The number of delegates to the convention shall be the same as that of the larger body of the legislature. The qualifications of delegates shall be the same as the highest qualifications required for election to the legislature. The legislature shall determine whether the delegates may be nominated on a partisan or a non-partisan basis. They shall be elected at the same places and in the same districts as are the members of the legislative body determining the number of delegates.

**Convention Notes**

Revises 1889 constitution [Art. XIX, sec. 8]. Legislature shall determine whether constitutional convention delegates be elected on partisan or non-partisan basis. (1889 constitution not explicit on this point. Montana Supreme Court held convention delegates must run on partisan basis.)

**Decisions under Former Provisions**

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 8, Art. XIX of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

**Section 5. Convention expenses.** The legislature shall, in the act calling the convention, designate the day, hour, and place of its meeting, and fix and provide for the pay of its members and officers and the necessary expenses of the convention.

**Convention Notes.**

No change except in grammar [Art. XIX, sec. 8].

visions in the 1889 Constitution, see annotations following sec. 8, Art. XIX of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

**Decisions under Former Provisions**

For decisions relating to similar pro-

**Section 6. Oath, vacancies.** Before proceeding, the delegates shall take the oath provided in this constitution. Vacancies occurring shall be filled in the manner provided for filling vacancies in the legislature if not otherwise provided by law.

**Convention Notes**

No change except in grammar [Art. XIX, sec. 8].

**Cross-References**

Oath of office, Const. Art. III, sec. 3.  
Vacancies in legislature, Const. Art. V, sec. 7.

**Section 7. Convention duties.** The convention shall meet after the election of the delegates and prepare such revisions, alterations, or amendments to the constitution as may be deemed necessary. They shall be submitted to the qualified electors for ratification or rejection as a whole or in separate articles or amendments as determined by the convention at an election appointed by the convention for that purpose not less than two months after adjournment. Unless so submitted and approved by a majority of the electors voting thereon, no such revision, alteration, or amendment shall take effect.

**Convention Notes**

Only change is removal of requirements in 1889 constitution [Art. XIX, sec. 8] that a convention meet within a certain time after election and that the election on the proposed constitution be held within six months.

**Decisions under Former Provisions**

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 8, Art. XIX of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

**Section 8. Amendment by legislative referendum.** Amendments to this constitution may be proposed by any member of the legislature. If adopted by an affirmative roll call vote of two-thirds of all the members thereof, whether one or more bodies, the proposed amendment shall be submitted to the qualified electors at the next general election. If approved by a majority of the electors voting thereon, the amendment shall become a part of this constitution on the first day of July after certification of the election returns unless the amendment provides otherwise.

**Convention Notes**

Revises 1889 constitution [Art. XIX, sec. 9]. Legislature may propose constitutional amendment by a vote of two-thirds of total membership rather than two-thirds of each house. Provides for July effective date for amendments.

**Cross-References**

Publication of proposed constitutional amendments, sec. 23-2802.

**Decisions under Former Provisions**

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 9, Art. XIX of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

**Section 9. Amendment by initiative.** (1) The people may also propose constitutional amendments by initiative. Petitions including the full text of the proposed amendment shall be signed by at least ten percent of the qualified electors of the state. That number shall include at least ten percent of the qualified electors in each of two-fifths of the legislative districts.

(2) The petitions shall be filed with the secretary of state. If the petitions are found to have been signed by the required number of electors, the secretary of state shall cause the amendment to be published as provided by law twice each month for two months previous to the next regular state-wide election.

(3) At that election, the proposed amendment shall be submitted to the qualified electors for approval or rejection. If approved by a majority voting thereon, it shall become a part of the constitution effective the first day of July following its approval, unless the amendment provides otherwise.

**Convention Notes**

New provision. Ten percent of voters may propose constitutional amendments by petition.

**Cross-References**

Initiative and referendum provisions of

Article III not applicable to constitutional revision, Const. Art. III, sec. 8.

Initiative petition for constitutional amendment, secs. 37-202, 37-203.

Publication of proposed constitutional amendments, sec. 23-2802.

**Section 10. Petition signers.** The number of qualified electors required for the filing of any petition provided for in this Article shall be determined by the number of votes cast for the office of governor in the preceding general election.

**Convention Notes**

New provision. Self-explanatory.

**Section 11. Submission.** If more than one amendment is submitted at the same election, each shall be so prepared and distinguished that it can be voted upon separately.

**Convention Notes**

No change except in grammar [Art. XIX, sec. 9].

**Cross-References**

Attorney general's summary, sec. 37-104.1.

Publication and printing requirements, sec. 37-107.

**Decisions under Former Provisions**

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 9, Art. XIX of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.



Done in open convention at the city of Helena, in the state of Montana, this twenty-second day of March, in the year of our Lord one thousand nine hundred and seventy-two.

LEO GRAYBILL, JR., PRESIDENT

JEAN M. BOWMAN, SECRETARY

MAGNUS AASHEIM

JOHN H. ANDERSON, JR.

OSCAR L. ANDERSON

HAROLD ARBANAS

FRANKLIN ARNESS

CEDOR B. ARONOW

WILLIAM H. ARTZ

THOMAS M. ASK

BETTY BABCOCK

LLOYD BARNARD

GRACE C. BATES

DON E. BELCHER

BEN E. BERG, JR.

E. M. BERTHELSON

CHET BLAYLOCK

VIRGINIA H. BLEND

GEOFFREY L. BRAZIER

BRUCE M. BROWN

DAPHNE BUGBEE

WILLIAM A. BURKHARDT

MARJORIE CAIN

BOB CAMPBELL

JEROME J. CATE

RICHARD J. CHAMPOUX

LYMAN W. CHOATE

MAX CONOVER

C. LOUISE CROSS

WADE J. DAHOOD

CARL M. DAVIS

DOUGLAS DELANEY

MAURICE DRISCOLL

DAVE DRUM

DOROTHY ECK

MARIAN S. ERDMANN

LESLIE ESKILDSEN

MARK ETCHART

JAMES R. FELT

DONALD R. FOSTER

NOEL D. FURLONG

J. C. GARLINGTON

E. S. GYSLER

OTTO T. HABEDANK

GENE HARBAUGH

ROD HANSON

R. S. HANSON

PAUL K. HARLOW

GEORGE HARPER

DANIEL W. HARRINGTON

GEORGE B. HELIKER

DAVID L. HOLLAND

ARNOLD W. JACOBSEN

GEORGE H. JAMES

TORREY B. JOHNSON

THOMAS F. JOYCE

A. W. KAMHOOT

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JOHN H. LEUTHOLD

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PETER "PETE" LORELLO

JOSEPH H. MCCARVEL

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RACHELL K. MANSFIELD

FRED J. MARTIN

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LYLE R. MONROE

MARSHALL MURRAY

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DONALD REBAL

ARLYNE E. REICHERT

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MILES ROMNEY

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CARMAN M. SKARI

M. LYNN SPARKS

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## 1972 CONSTITUTION OF MONTANA

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MRS. EDITH M. VAN BUSKIRK  
ROBERT VERMILLION  
ROGER A. WAGNER

JACK K. WARD  
MARGARET S. WARDEN  
ARCHIE O. WILSON  
ROBERT F. WOODMANSEY

### TRANSITION SCHEDULE

The following provisions shall remain part of this Constitution until their terms have been executed. Once each year the attorney general shall review the following provisions and certify to the secretary of state which, if any, have been executed. Any provisions so certified shall thereafter be removed from this Schedule and no longer published as part of this Constitution.

- Section 1. Accelerated Effective Date [executed]
- Section 2. Delayed Effective Date [executed]
- Section 3. Prospective Operation of Declaration of Rights
- Section 4. Terms of Judiciary
- Section 5. Terms of Legislators [executed]
- Section 6. General Transition

#### Convention Notes

Provides for an orderly change from the 1889 constitution to the 1972 constitution.

### Section 1. Accelerated effective date.

#### Compiler's Notes

Section 1 of the Adoption Schedule provided: "This Constitution, if approved by a majority of those voting at the election as provided by the Constitution of 1889, shall take effect on July 1, 1973, except as otherwise provided in sections 1 and 2 of the Transition Schedule. The Constitution of 1889, as amended, shall thereafter be of no effect."

The Adoption Schedule, submitted with the proposed Constitution for limited purposes only, is not reprinted herein since the introduction to the schedule provided that it should not be published as a part of the new Constitution.

By letter of December 4, 1974, the Attorney General certified to the secretary of state that the provisions of Section 1 of the Transition Schedule were fully executed: "Section 6 (Sessions) of Article V, Constitution of Montana (1972), has been fully executed. However, a proposed

amendment to Section 6, Article V, was submitted to the electorate during the general election held on November 5, 1974, which received a majority vote in favor of its adoption. The passage of this amendment [returned] the Montana Legislature to biennial sessions.

"Section 14 (DISTRICTING AND AP-PORTIONMENT) of Article V Constitution of Montana (1972) has also been fully executed. The reapportionment commission referred to in Section 14 filed its plan with the Secretary of State on February 27, 1974 after receiving recommendations from both houses of the Legislature."

#### Convention Notes

Proposed section on annual legislative sessions and reapportionment of the legislature would be effective January 1, 1973. The reapportionment commission could then be appointed by the 1973 legislature and report its plan to the 1974 legislature.

### Section 2. Delayed effective date.

#### Compiler's Notes

By letter of December 4, 1974, the attorney general certified to the secretary of

state that the provision of this section of the Transition Schedule was fully executed: "The first redistricting and reap-

## TRANSITION SCHEDULE

portionment plan was filed with the Secretary of State on February 27, 1974, and pursuant to Section 43-117, Revised Codes of Montana 1947, became law as of that date. Therefore, the provisions of Sections 1, 2 and 3, Article V, Constitution of Montana, (1972), are now in effect."

### Convention Notes

Sections on size of legislature, election and terms of its members would become effective when the reapportionment plan becomes law. If this is in 1974 then elections would be held in November 1974 for new members of the legislature to take office January 1, 1975.

**Section 3. Prospective operation of declaration of rights.** Any rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive.

### Convention Notes

Any new rights created in Article II take effect only after July 1, 1973. It

does not create any rights for past events.

**Section 4. Terms of judiciary.** Supreme court justices, district court judges, and justices of the peace holding office when this Constitution becomes effective shall serve the terms for which they were elected or appointed.

### Convention Notes

Since the proposed constitution changes the length of terms of office of judges

this provision makes it clear that all judges may serve to the end of the term for which they were elected.

**Section 5. Terms of legislators.**

### Compiler's Notes

By letter of March 24, 1977, the attorney general certified to the secretary of state that the provisions of section 5 of the Transition Schedule were fully executed: "Subsection (1) of Section 5 has been fully executed. Under that subsection, the first redistricting and reapportionment plan was filed with the Secretary of State and became effective on February 27, 1974. Therefore, the terms of all legislators elected prior to the effective date of the 1972 Constitution on July 1, 1973, ended on December 31, 1974. Subsection

(2) of Section 5 of the Transition Schedule has been fully executed."

### Convention Notes

(1) If the reapportionment and redistricting plan becomes effective after the 1974 legislative session, the terms of legislators serving in that session would end December 31, 1974. (2) Section 3, Article V provides that senators have four year terms but that one-half are elected every two years. This section provides that one-half of the senators first elected will have only two year terms.

**Section 6. General transition.** (1) The rights and duties of all public bodies shall remain as if this Constitution had not been adopted with the exception of such changes as are contained in this Constitution. All laws, ordinances, regulations, and rules of court not contrary to, or inconsistent with, the provisions of this Constitution shall remain in force, until they shall expire by their own limitation or shall be altered or repealed pursuant to this Constitution.

(2) The validity of all public and private bonds, debts, and contracts, and of all suits, actions, and rights of action, shall continue as if no change had taken place.

(3) All officers filling any office by election or appointment shall continue the duties thereof, until the end of the terms to which they were ap-



## 1972 CONSTITUTION OF MONTANA

pointed or elected, and until their offices shall have been abolished or their successors selected and qualified in accordance with this Constitution or laws enacted pursuant thereto.

### Convention Notes

Unless the proposed constitution specifically changes a law it will not affect any rights or duties or the validity of contracts, bonds, etc. All elected officials serve out their present terms.

### Preservation of Existing Rights

Plaintiff who had filed petition for water appropriation before repeal of former water law had an existing right in the priority of his application which was preserved by subdivision (2) of this section and by article IX, section 3(1) of the 1972 Montana constitution. General Agriculture Corp. v. Moore, — M —, 534 P 2d 859.

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42, 43	Rep. Ch. 194, Sec. 13, L. 1967	204, 205	Rep. Ch. 129, Sec. 1, L. 1963
45	Rep. Ch. 194, Sec. 13, L. 1967	209-210.1	Rep. Ch. 431, Sec. 176, L. 1975
47	Rep. Ch. 194, Sec. 13, L. 1967	211-216.1	Rep. Ch. 431, Sec. 176, L. 1975
48	Rep. Ch. 14, Sec. 1, L. 1975	218	Rep. Ch. 431, Sec. 176, L. 1975
53, 54	Rep. Ch. 194, Sec. 13, L. 1967	219	Rep. Ch. 129, Sec. 1, L. 1963
56	Rep. Ch. 18, Sec. 4, L. 1969	223	Rep. Ch. 177, Sec. 51, L. 1965
61-64	Rep. Ch. 1, Sec. 4, L. 1965	235	Rep. Ch. 326, Sec. 103, L. 1974
66, 67	Rep. Ch. 1, Sec. 4, L. 1965	238-241	Rep. Ch. 97, Sec. 32, L. 1961
69-73	Rep. Ch. 1, Sec. 4, L. 1965	249	Rep. Ch. 97, Sec. 32, L. 1961
75	Rep. Ch. 103, Sec. 10, L. 1977	251-253	Rep. Ch. 80, Sec. 14, L. 1961
76-78.3	Rep. Ch. 1, Sec. 4, L. 1965	254	Rep. Ch. 271, Sec. 33, L. 1963
78.4	Rep. Ch. 309, Sec. 31, L. 1977	255-259	Rep. Ch. 80, Sec. 14, L. 1961
89	Rep. Ch. 30, Sec. 2, L. 1973	259.2	Rep. Ch. 271, Sec. 33, L. 1963
94	Rep. Ch. 309, Sec. 31, L. 1977	259.4	Rep. Ch. 271, Sec. 33, L. 1963
99-107	Rep. Ch. 342, Sec. 29, L. 1977	262	Rep. Ch. 97, Sec. 9, L. 1977
117	Rep. Ch. 326, Sec. 103, L. 1974	263-266	Rep. Ch. 80, Sec. 14, L. 1961
118	Rep. Ch. 120, Sec. 96, L. 1974; Ch. 158, Sec. 1, L. 1974	267	Rep. Ch. 43, Sec. 3, L. 1973
119	Rep. Ch. 428, Sec. 116, L. 1973	268, 269	Rep. Ch. 80, Sec. 14, L. 1961
123.1	Rep. Ch. 326, Sec. 103, L. 1974	270	Rep. Ch. 343, Sec. 19, L. 1977
130, 131	Rep. Ch. 297, Sec. 6, L. 1973	274	Rep. Ch. 80, Sec. 14, L. 1961
135	43-711.2	284	Rep. Ch. 326, Sec. 103, L. 1974
136	Rep. Ch. 59, Sec. 2, L. 1973; Ch. 96, Secs. 3, 8, L. 1973	285	Rep. Ch. 97, Sec. 9, L. 1977
137	Rep. Ch. 80, Sec. 14, L. 1961	289	Rep. Ch. 97, Sec. 9, L. 1977
142	43-711.3	290	Rep. Ch. 177, Sec. 51, L. 1965
143	43-711.4	292	Rep. Ch. 97, Sec. 9, L. 1977
144	43-711.5	293	82-1916.1
145.1-145.7	Rep. Ch. 300, Sec. 143, L. 1967	293.3	Rep. Ch. 97, Sec. 9, L. 1977
148	Rep. Ch. 177, Sec. 51, L. 1965	293.5	Rep. Ch. 97, Sec. 9, L. 1977
153	Rep. Ch. 147, Sec. 242, L. 1963	295-298	Rep. Ch. 158, Sec. 11, L. 1959
157	Rep. Ch. 94, Sec. 5, L. 1969	299	79-1015.1
160	Rep. Ch. 61, Sec. 11, L. 1977	300	79-1015.2
179	Rep. Ch. 147, Sec. 242, L. 1963	301	Rep. Ch. 147, Sec. 242, L. 1963
182.1	Rep. Ch. 205, Sec. 2, L. 1971	303	Rep. Ch. 158, Sec. 11, L. 1959
183	Rep. Ch. 152, Sec. 3, L. 1971	304	79-1015.3
184	Rep. Ch. 61, Sec. 11, L. 1977	306	Rep. Ch. 81, Sec. 3, L. 1961
185	Rep. Ch. 152, Sec. 3, L. 1971	310-315	Rep. Ch. 271, Sec. 33, L. 1963
187.1-187.3	Rep. Ch. 152, Sec. 3, L. 1971	317-319	Rep. Ch. 271, Sec. 33, L. 1963
188	Rep. Ch. 177, Sec. 51, L. 1965	349.1	Rep. Ch. 158, Sec. 7, L. 1967
189	Rep. Ch. 152, Sec. 3, L. 1971	349.3	Rep. Ch. 253, Sec. 108, L. 1974
190, 191	Rep. Ch. 61, Sec. 11, L. 1977	349.18-349.20	Rep. Ch. 452, Sec. 46, L. 1973
197.1	Rep. Ch. 117, Sec. 1, L. 1973	349.23	Rep. Ch. 253, Sec. 108, L. 1974
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201	Rep. Ch. 177, Sec. 51, L. 1965	349.26-	
202	Rep. Ch. 129, Sec. 1, L. 1963	349.36	Rep. Ch. 253, Sec. 108, L. 1974
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376	Rep. Ch. 177, Sec. 51, L. 1965	960-971.1	Rep. Ch. 5, Sec. 496, L. 1971
380-383	Rep. Ch. 305, Sec. 2, L. 1967	972, 973	Rep. Ch. 5, Sec. 496, L. 1971
391	Rep. Ch. 264, Sec. 10-102, L. 1963	975-980	Rep. Ch. 5, Sec. 496, L. 1971
431	Rep. Ch. 7, Sec. 6, L. 1973	985-1008	Rep. Ch. 5, Sec. 496, L. 1971
437, 438	Rep. Ch. 202, Sec. 3, L. 1959	1010.1	Rep. Ch. 5, Sec. 496, L. 1971
439	Rep. Ch. 326, Sec. 103, L. 1974	1011-1015.2	Rep. Ch. 5, Sec. 496, L. 1971
440	Rep. Ch. 202, Sec. 3, L. 1959	1016-1019	Rep. Ch. 5, Sec. 496, L. 1971
464-465	Rep. Ch. 177, Sec. 51, L. 1965	1019.1-1019.6	Rep. Ch. 5, Sec. 496, L. 1971
466, 467	Rep. Ch. 68, Sec. 10, L. 1967		
469-470	Rep. Ch. 177, Sec. 51, L. 1965	1019.8-1019.10	Rep. Ch. 5, Sec. 496, L. 1971
471	Rep. Ch. 68, Sec. 10, L. 1967		
508	Rep. Ch. 68, Sec. 10, L. 1967	1019.12-1019.26	Rep. Ch. 5, Sec. 496, L. 1971
513	Rep. Ch. 198, Sec. 5, L. 1977; Ch. 309, Sec. 31, L. 1977		
515	Rep. Ch. 388, Sec. 2, L. 1973	1020-1029.1	Rep. Ch. 5, Sec. 496, L. 1971
519-521	Rep. Ch. 80, Sec. 14, L. 1961	1030, 1031	Rep. Ch. 5, Sec. 496, L. 1971
522	Rep. Ch. 61, Sec. 11, L. 1977	1034-1036.2	Rep. Ch. 5, Sec. 496, L. 1971
530.2, 530.3	Rep. Ch. 315, Sec. 24, L. 1974	1037.1-1037.5	Rep. Ch. 5, Sec. 496, L. 1971
531-536	Rep. Ch. 368, Sec. 248, L. 1969		
537.1-551	Rep. Ch. 368, Sec. 248, L. 1969	1039.1-1039.10	Rep. Ch. 5, Sec. 496, L. 1971
553-562	Rep. Ch. 368, Sec. 248, L. 1969		
566-598	Rep. Ch. 368, Sec. 248, L. 1969	1049-1051.1	Rep. Ch. 5, Sec. 496, L. 1971
600-641	Rep. Ch. 368, Sec. 248, L. 1969	1052-1057	Rep. Ch. 5, Sec. 496, L. 1971
644-652	Rep. Ch. 368, Sec. 248, L. 1969	1059-1073	Rep. Ch. 5, Sec. 496, L. 1971
654-662	Rep. Ch. 368, Sec. 248, L. 1969	1075-1085	Rep. Ch. 5, Sec. 496, L. 1971
663	Rep. Ch. 156, Sec. 11, L. 1965	1088	Rep. Ch. 5, Sec. 496, L. 1971
665-670	Rep. Ch. 156, Sec. 11, L. 1965; Ch. 368, Sec. 248, L. 1969	1097	Rep. Ch. 5, Sec. 496, L. 1971
673.1	Rep. Ch. 368, Sec. 248, L. 1969	1105-1112	Rep. Ch. 26, Sec. 1, L. 1961
673.2	Rep. Ch. 156, Sec. 11, L. 1965	1133-1140	Rep. Ch. 5, Sec. 496, L. 1971
673.6-673.7	Rep. Ch. 156, Sec. 11, L. 1965	1171, 1172	Rep. Ch. 262, Sec. 16, L. 1969
673.8	Rep. Ch. 368, Sec. 248, L. 1969	1173, 1174	Rep. Ch. 5, Sec. 496, L. 1971
677-681	Rep. Ch. 368, Sec. 248, L. 1969	1175	Rep. Ch. 366, Sec. 27, L. 1969
683-735	Rep. Ch. 368, Sec. 248, L. 1969	1176-1180	Rep. Ch. 5, Sec. 496, L. 1971
757-782	Rep. Ch. 368, Sec. 248, L. 1969	1184-1186	Rep. Ch. 5, Sec. 496, L. 1971
784-797	Rep. Ch. 368, Sec. 248, L. 1969	1198	Rep. Ch. 5, Sec. 496, L. 1971
798-800	Rep. Ch. 194, Sec. 13, L. 1967	1199	Rep. Ch. 79, Sec. 1, L. 1961
801-812.11	Rep. Ch. 368, Sec. 248, L. 1969	1201, 1202	Rep. Ch. 5, Sec. 496, L. 1971
812.13	Rep. Ch. 368, Sec. 248, L. 1969	1205	Rep. Ch. 5, Sec. 496, L. 1971
812.14	Rep. Ch. 20, Sec. 3, L. 1959	1207-1211	Rep. Ch. 5, Sec. 496, L. 1971
812.15	Rep. Ch. 368, Sec. 248, L. 1969	1212	Rep. Ch. 75, Sec. 1, L. 1961
813-828.7	Rep. Ch. 368, Sec. 248, L. 1969	1213-1218.2	Rep. Ch. 5, Sec. 496, L. 1971
829-829.11	Rep. Ch. 368, Sec. 248, L. 1969	1219-1223	Rep. Ch. 5, Sec. 496, L. 1971
830-835	Rep. Ch. 5, Sec. 496, L. 1971	1224.1-1224.32	Rep. Ch. 5, Sec. 496, L. 1971
836	Rep. Ch. 2, Sec. 63 and Ch. 5, Sec. 496, L. 1971		
852, 852.1	Rep. Ch. 2, Sec. 63, L. 1971	1227	Rep. Ch. 5, Sec. 496, L. 1971
853-859	Rep. Ch. 2, Sec. 63, L. 1971	1231	Rep. Ch. 5, Sec. 496, L. 1971
860	Rep. Ch. 127, Sec. 1, L. 1967; Ch. 2, Sec. 63, L. 1971	1243	Rep. Ch. 5, Sec. 496, L. 1971
861-869	Rep. Ch. 2, Sec. 63, L. 1971	1252, 1253	Rep. Ch. 5, Sec. 496, L. 1971
872-912	Rep. Ch. 2, Sec. 63, L. 1971	1254.1-1254.8	Rep. Ch. 5, Sec. 496, L. 1971
913-916	Rep. Ch. 75, Sec. 5, L. 1967		
917-923	Rep. Ch. 2, Sec. 63, L. 1971	1255-1261	Rep. Ch. 5, Sec. 496, L. 1971
926-929	Rep. Ch. 2, Sec. 63, L. 1971	1262.1	Rep. Ch. 5, Sec. 496, L. 1971
930	Rep. Ch. 298, Sec. 9, L. 1973	1262.3-1262.13	Rep. Ch. 5, Sec. 496, L. 1971
930.1-930.4	Rep. Ch. 2, Sec. 63, L. 1971		
931-938	Rep. Ch. 5, Sec. 496, L. 1971	1262.15-1262.17	Rep. Ch. 5, Sec. 496, L. 1971
940	Rep. Ch. 93, Sec. 44, L. 1969		
941-943	Rep. Ch. 5, Sec. 496, L. 1971	1262.19-1262.43	Rep. Ch. 5, Sec. 496, L. 1971
945, 946	Rep. Ch. 5, Sec. 496, L. 1971		
948	Rep. Ch. 5, Sec. 496, L. 1971	1262.52-1262.79	Rep. Ch. 5, Sec. 496, L. 1971
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1263.9, 1263.10	Rep. Ch. 5, Sec. 496, L. 1971	1538	Rep. Ch. 199, Sec. 101, L. 1965
1263.12-1263.18	Rep. Ch. 5, Sec. 496, L. 1971	1539, 1540	Rep. Ch. 266, Sec. 82, L. 1963
1263.20-1263.26	Rep. Ch. 5, Sec. 496, L. 1971	1541	Rep. Ch. 199, Sec. 101, L. 1965
1263.28, 1263.29	Rep. Ch. 5, Sec. 496, L. 1971	1542-1544	Rep. Ch. 266, Sec. 82, L. 1963
1263.31	Rep. Ch. 5, Sec. 496, L. 1971	1545	Rep. Ch. 199, Sec. 101, L. 1965
1318-1327.1	Rep. Ch. 5, Sec. 496, L. 1971	1546, 1546.1	Rep. Ch. 266, Sec. 82, L. 1963
1328, 1329	Rep. Ch. 5, Sec. 496, L. 1971	1575.3, 1575.4	Rep. Ch. 215, Sec. 3, L. 1965
1330-1412	Rep. Ch. 94, Sec. 73, L. 1974	1576-1579	Rep. Ch. 190, Sec. 1, L. 1959
1413	Rep. Ch. 199, Sec. 101, L. 1965	1580, 1581	Rep. Ch. 218, Sec. 173, L. 1974
1414	Rep. Ch. 266, Sec. 82, L. 1963	1610	Rep. Ch. 316, Sec. 209, L. 1974
1415	Rep. Ch. 199, Sec. 101, L. 1965	1611-1620	Rep. Ch. 197, Sec. 12-109, L. 1965
1416, 1417	Rep. Ch. 266, Sec. 82, L. 1963	1621	Rep. Ch. 316, Sec. 209, L. 1974
1418, 1419	Rep. Ch. 466, Sec. 38, L. 1975	1622-1632	Rep. Ch. 197, Sec. 12-109, L. 1965
1421	Rep. Ch. 466, Sec. 38, L. 1975	1633	Rep. Ch. 316, Sec. 209, L. 1974
1423-1427	Rep. Ch. 466, Sec. 38, L. 1975	1634-1647	Rep. Ch. 197, Sec. 12-109, L. 1965
1428	Rep. Ch. 120, Sec. 96, L. 1974	1648	Rep. Ch. 316, Sec. 209, L. 1974
1429	Rep. Ch. 198, Sec. 2 and Ch. 213, Sec. 9, L. 1963	1649-1650	Rep. Ch. 197, Sec. 12-109, L. 1965
1430	Rep. Ch. 120, Sec. 96, L. 1974	1651	Rep. Ch. 316, Sec. 209, L. 1974
1431-1439	Rep. Ch. 466, Sec. 38, L. 1975	1676-1682	Rep. Ch. 197, Sec. 12-109, L. 1965
1440	Rep. Ch. 37, Sec. 53, L. 1977; Ch. 450, Sec. 12, L. 1977	1683	Rep. Ch. 316, Sec. 209, L. 1974
1441	Rep. Ch. 466, Sec. 38, L. 1975	1684-1701	Rep. Ch. 197, Sec. 12-109, L. 1965
1443	Rep. Ch. 466, Sec. 38, L. 1975	1702	Rep. Ch. 316, Sec. 209, L. 1974
1444	Rep. Ch. 213, Sec. 9, L. 1963	1703-1713	Rep. Ch. 197, Sec. 12-109, L. 1965
1444.1	Rep. Ch. 468, Sec. 35, L. 1975	1714	Rep. Ch. 316, Sec. 209, L. 1974
1445	Rep. Ch. 112, Sec. 15, L. 1963	1721-1725	Rep. Ch. 197, Sec. 12-109, L. 1965
1446	Rep. Ch. 112, Sec. 15 and Ch. 266, Sec. 82, L. 1963	1726	Rep. Ch. 316, Sec. 209, L. 1974
1447-1450	Rep. Ch. 112, Sec. 15, L. 1963	1727-1735	Rep. Ch. 197, Sec. 12-109, L. 1965
1451, 1452	Rep. Ch. 112, Sec. 15 and Ch. 213, Sec. 9, L. 1963	1737-1739	Rep. Ch. 197, Sec. 12-109, L. 1965
1453-1455	Rep. Ch. 112, Sec. 15, L. 1963	1741	Rep. Ch. 197, Sec. 12-109, L. 1965
1484-1485	Rep. Ch. 199, Sec. 101, L. 1965	1748.1-1748.3	Rep. Ch. 236, Sec. 1, L. 1975
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1488	Rep. Ch. 199, Sec. 101, L. 1965	1748.6	Rep. Ch. 316, Sec. 209, L. 1974
1489-1492	Rep. Ch. 266, Sec. 82, L. 1963	1750 to	
1493-1497	Rep. Ch. 199, Sec. 101, L. 1965	1751.1	Rep. Ch. 316, Sec. 209, L. 1974
1498-1500	Rep. Ch. 266, Sec. 82, L. 1963	1751.6	Rep. Ch. 316, Sec. 209, L. 1974
1503-1506	Rep. Ch. 199, Sec. 101, L. 1965	1760.1-1760.6	Rep. Ch. 101, Sec. 1, L. 1959
1511	Rep. Ch. 199, Sec. 101, L. 1965	1763.6	Rep. Ch. 256, Sec. 5, L. 1965
1512-1515	Rep. Ch. 266, Sec. 82, L. 1963	1764	Rep. Ch. 197, Sec. 12-109, L. 1965
1516-1517	Rep. Ch. 199, Sec. 101, L. 1965	1765	Rep. Ch. 316, Sec. 209, L. 1974
1518	Rep. Ch. 266, Sec. 82, L. 1963	1783-1792	Rep. Ch. 197, Sec. 12-109, L. 1965
1519	Rep. Ch. 199, Sec. 101, L. 1965	1795-1798	Rep. Ch. 197, Sec. 12-109, L. 1965
1520	Rep. Ch. 189, Sec. 2, L. 1959	1799	Rep. Ch. 316, Sec. 209, L. 1974
1521-1523	Rep. Ch. 213, Sec. 9, L. 1963	1800	Rep. Ch. 197, Sec. 12-109, L. 1965
1524	Rep. Ch. 266, Sec. 82, L. 1963	1805.1	Rep. Ch. 428, Sec. 116, L. 1973
1525	Rep. Ch. 199, Sec. 101, L. 1965	1805.5-1805.7	Rep. Ch. 428, Sec. 116, L. 1973
1526	Rep. Ch. 266, Sec. 82, L. 1963		
1527-1528	Rep. Ch. 199, Sec. 101, L. 1965		
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1805.10	Rep. Ch. 93, Sec. 44, L. 1969	2122.7	Rep. Ch. 100, Sec. 58, L. 1973
1805.12-1805.14	Rep. Ch. 428, Sec. 116, L. 1973	2122.10	Rep. Ch. 155, Sec. 11, L. 1977
1805.30	Rep. Ch. 257, Sec. 10, L. 1965	2122.13	Rep. Ch. 126, Sec. 15, L. 1977
1805.41	Rep. Ch. 358, Sec. 4, L. 1975	2122.19-2122.22	Rep. Ch. 98, Sec. 22, L. 1977
1805.50	Rep. Ch. 428, Sec. 116, L. 1973	2133	Rep. Ch. 98, Sec. 22, L. 1977
1805.98-1805.105	Rep. Ch. 298, Sec. 9, L. 1973	2136	Rep. Ch. 98, Sec. 22, L. 1977
1805.106-		2141, 2142	Rep. Ch. 98, Sec. 22, L. 1977
1805.111	Rep. Ch. 326, Sec. 103, L. 1974	2144	Rep. Ch. 98, Sec. 22, L. 1977
1805.115	81-106	2146	Rep. Ch. 98, Sec. 22, L. 1977
1805.116	81-107	2166	Rep. Ch. 126, Sec. 15, L. 1977
1805.120	81-108	2173	Rep. Ch. 263, Sec. 15, L. 1975
1808.1	Rep. Ch. 428, Sec. 116, L. 1973	2265-2267	Rep. Ch. 249, Sec. 23, L. 1967
1830.3	Rep. Ch. 253, Sec. 108, L. 1974	2308-2310	Rep. Ch. 36, Sec. 5, L. 1977
1839.1	28-802	2312	Rep. Ch. 36, Sec. 5, L. 1977
1839.2	28-803	2315.7-2315.9	Rep. Ch. 36, Sec. 5, L. 1977
1839.3	28-804	2316-2326	Rep. Ch. 525, Sec. 19, L. 1975
1839.4	28-805	2335	Rep. Ch. 125, Sec. 8, L. 1975
1839.5	Rep. Ch. 253, Sec. 108, L. 1974	2338	Rep. Ch. 125, Sec. 8, L. 1975
1839.6	28-806	2340	Rep. Ch. 125, Sec. 8, L. 1975
1881	Rep. Ch. 464, Sec. 1, L. 1977	2343.6	Rep. Ch. 401, Sec. 7, L. 1977
1882.3	Rep. Ch. 428, Sec. 116, L. 1973	2344.1	Rep. Ch. 52, Sec. 24, L. 1977
1882.13, 1882.14	Rep. Ch. 428, Sec. 116, L. 1973	2344.11	Rep. Ch. 156, Sec. 12, L. 1977
1882.24	Rep. Ch. 428, Sec. 116, L. 1973	2344.12	Rep. Ch. 126, Sec. 12, L. 1975
1913-1915	Rep. Ch. 61, Sec. 11, L. 1977	2355.1-2355.3	Rep. Ch. 40, Sec. 1, L. 1977
1925, 1926	Rep. Ch. 89, Sec. 4, L. 1961	2355.4	Rep. Ch. 36, Sec. 5, L. 1977; Ch. 40, Sec. 1, L. 1977
1937	Rep. Ch. 184, Sec. 8, L. 1961	2355.5	Rep. Ch. 40, Sec. 1, L. 1977
1939	Rep. Ch. 184, Sec. 8, L. 1961	2355.6-2355.8	Rep. Ch. 36, Sec. 5, L. 1977; Ch. 40, Sec. 1, L. 1977
1949-1953	Rep. Ch. 280, Sec. 22, L. 1965	2356	Rep. Ch. 52, Sec. 24, L. 1977
1954	Rep. Ch. 280, Sec. 1, L. 1965	2367	Rep. Ch. 52, Sec. 24, L. 1977
1955	Rep. Ch. 280, Sec. 22, L. 1965	2375	Rep. Ch. 127, Sec. 6, L. 1975
1956	Rep. Ch. 280, Sec. 1, L. 1965	2377	Rep. Ch. 127, Sec. 6, L. 1975
1956.1	89-142	2380.1-2380.10	Rep. Ch. 370, Sec. 1, L. 1973
1957	Rep. Ch. 280, Sec. 1, L. 1965	2381.22	Rep. Ch. 197, Sec. 12-109, L. 1965
1958	Rep. Ch. 129, Sec. 1 and Ch. 147, Sec. 242, L. 1963	2381.23	Rep. Ch. 60, Sec. 1, L. 1969
1959	Rep. Ch. 280, Sec. 1, L. 1965	2396.1	Rep. Ch. 197, Sec. 12-109, L. 1965
1960	Rep. Ch. 280, Sec. 22, L. 1965	2396.3	Rep. Ch. 197, Sec. 12-109, L. 1965
1961	Rep. Ch. 129, Sec. 1, L. 1963	2397	Rep. Ch. 52, Sec. 24, L. 1977
1962	Rep. Ch. 280, Sec. 22, L. 1965	2408.1-2408.8	Rep. Ch. 211, Sec. 3, L. 1975
1963	Rep. Ch. 147, Sec. 242, L. 1963	2408.10, 2408.11	Rep. Ch. 211, Sec. 3, L. 1975
1964	Rep. Ch. 280, Sec. 22, L. 1965	2443.1	Rep. Ch. 218, Sec. 173, L. 1974
1966-1986	Rep. Ch. 280, Sec. 22, L. 1965	2443.2	3-3302
1987	Rep. Ch. 147, Sec. 242, L. 1963	2443.3	3-3301
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1990-1995	Rep. Ch. 280, Sec. 22, L. 1965	2443.6	3-3305
1999, 2000	Rep. Ch. 566, Sec. 74, L. 1977	2443.7	3-3306
2000.4	Rep. Ch. 25, Sec. 1, L. 1971	2443.8	3-3307
2034	Rep. Ch. 155, Sec. 11, L. 1977	2443.9	Rep. Ch. 218, Sec. 173, L. 1974
2037-2041	Rep. Ch. 405, Sec. 120, L. 1973	2443.10	3-3308
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2049, 2050	Rep. Ch. 405, Sec. 120, L. 1973	2443.12	Rep. Ch. 218, Sec. 173, L. 1974
2061	Rep. Ch. 126, Sec. 15, L. 1977	2443.13	3-3309
2069-2074	Rep. Ch. 507, Sec. 6, L. 1975	2443.14	3-3310
2091, 2092	Rep. Ch. 98, Sec. 22, L. 1977	2443.15	3-3311
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2485-2495	Rep. Ch. 18, Sec. 12, L. 1967	2815.31	4-3-302
2497-2502	Rep. Ch. 18, Sec. 12, L. 1967	2815.32	4-3-303
2540, 2541	Rep. Ch. 197, Sec. 223, L. 1967	2815.33	4-3-301
2543-2561	Rep. Ch. 197, Sec. 223, L. 1967	2815.35	4-4-105
2562-2577	Rep. Ch. 107, Sec. 18, L. 1965	2815.36	4-4-201
2578-2582	Rep. Ch. 307, Sec. 27, L. 1967	2815.40	Rep. Ch. 387, Sec. 121, L. 1975
2583	Rep. Ch. 310, Sec. 201, L. 1974	2815.41	4-3-104
2586-2588	Rep. Ch. 307, Sec. 27, L. 1967	2815.42	Rep. Ch. 387, Sec. 121, L. 1975
2589	Rep. Ch. 122, Sec. 12, L. 1965	2815.44	4-4-401
2591, 2592	Rep. Ch. 307, Sec. 27, L. 1967	2815.45	4-4-402
2594-2599	Rep. Ch. 307, Sec. 27, L. 1967	2815.47	4-6-301
2615-2619	Rep. Ch. 197, Sec. 223, L. 1967	2815.48	Rep. Ch. 387, Sec. 121, L. 1975
2620.1-2620.3	Rep. Ch. 413, Sec. 51, L. 1971	2815.49	4-6-402
2620.5-2620.31	Rep. Ch. 413, Sec. 51, L. 1971	2815.50	4-1-407
2620.34	Rep. Ch. 413, Sec. 51, L. 1971	2815.51	4-3-219
2620.36-2620.44	Rep. Ch. 413, Sec. 51, L. 1971	2815.53-2815.59	Rep. Ch. 387, Sec. 121, L. 1975
2620.45, 2620.46	Rep. Ch. 12, Sec. 59, L. 1977	2815.60	4-1-101
2620.47-2620.72	Rep. Ch. 413, Sec. 51, L. 1971	2815.61	Rep. Ch. 387, Sec. 121, L. 1975
2634.4	Rep. Ch. 141, Sec. 6, L. 1977	2815.62	4-1-105
2634.7	Rep. Ch. 71, Sec. 3, L. 1973	2815.63	4-1-301
2634.9	Rep. Ch. 141, Sec. 6, L. 1977	2815.64	Rep. Ch. 496, Sec. 17, L. 1977
2634.12	Rep. Ch. 71, Sec. 3, L. 1973	2815.65, 2815.66	Rep. Ch. 387, Sec. 121, L. 1975
2641-2657	Rep. Ch. 197, Sec. 223, L. 1967	2815.67	4-1-302
2729	Rep. Ch. 225, Sec. 24, L. 1971	2815.68	4-1-303
2733	Rep. Ch. 456, Sec. 9, L. 1975	2815.69	4-2-101
2734	Rep. Ch. 225, Sec. 24, L. 1971	2815.70	Rep. Ch. 387, Sec. 121, L. 1975
2738	Rep. Ch. 229, Sec. 14, L. 1967	2815.71	4-2-106
2739, 2740	Rep. Ch. 129, Sec. 1, L. 1963	2815.72	Rep. Ch. 387, Sec. 121, L. 1975
2744	Rep. Ch. 229, Sec. 14, L. 1967	2815.73	4-2-102
2757, 2758	Rep. Ch. 229, Sec. 14, L. 1967	2815.74	4-2-107
2762	Rep. Ch. 187, Sec. 39, L. 1977	2815.75	4-2-104
2778.5-2778.7	Rep. Ch. 147, Sec. 4, L. 1971	2815.76	4-2-103
2795, 2796	Rep. Ch. 352, Sec. 1, L. 1973	2815.77-2815.86	Rep. Ch. 154, Sec. 17, L. 1965
2801	Rep. Ch. 359, Sec. 77, L. 1977	2815.87	Rep. Ch. 81, Sec. 1, L. 1974
2809	Rep. Ch. 187, Sec. 39, L. 1977	2815.88-2815.92	Rep. Ch. 387, Sec. 121, L. 1975
2815	Rep. Ch. 352, Sec. 1, L. 1973	2815.93	4-1-205
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2815.11, 2815.12	Rep. Ch. 387, Sec. 121, L. 1975	2815.95	4-1-203
2815.13	4-3-202	2815.96-2815.103	Rep. Ch. 387, Sec. 121, L. 1975
2815.14	4-3-201	2815.104	4-1-201
2815.15	4-4-101	2815.105	4-3-101
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2815.19	Rep. Ch. 387, Sec. 121, L. 1975	2815.110	4-6-106
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2815.22	4-3-206	2815.112	4-3-102
2815.23	4-4-103	2815.113	Rep. Ch. 387, Sec. 121, L. 1975
2815.24	4-3-213	2815.114	4-6-103
2815.25	4-6-403	2815.115	4-6-104
2815.26	4-3-214	2815.116	Rep. Ch. 154, Sec. 17, L. 1965
2815.27	4-3-215	2815.117	Rep. Ch. 387, Sec. 121, L. 1975
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2815.124	4-3-103	2917	Rep. Ch. 252, Sec. 2, L. 1973
2815.125	Rep. Ch. 45, Sec. 1, L. 1974	2921	Rep. Ch. 197, Sec. 1, L. 1959
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2815.131	4-6-107	2936	Rep. Ch. 106, Sec. 1, L. 1973
2815.132	4-6-108	2938, 2939	Rep. Ch. 537, Sec. 7, L. 1975
2815.133	4-6-203	2941-2943	Rep. Ch. 537, Sec. 7, L. 1975
2815.134	4-6-207	2945	Rep. Ch. 537, Sec. 7, L. 1975
2815.135	4-6-208	2947-2951	Rep. Ch. 537, Sec. 7, L. 1975
2815.136	4-6-209	2953-2962	Rep. Ch. 537, Sec. 7, L. 1975
2815.137	4-6-210	2963	Rep. Ch. 147, Sec. 242, L. 1963
2815.138	4-6-211	2967	Rep. Ch. 23, Sec. 88, L. 1975
2815.139	4-6-303	2969	Rep. Ch. 23, Sec. 88, L. 1975
2815.140	4-6-304	2983	Rep. Ch. 324, Sec. 2, L. 1977
2815.141	4-6-305	2986	Rep. Ch. 324, Sec. 2, L. 1977
2815.142	4-6-306	2990.1	Rep. Ch. 550, Sec. 9, L. 1977
2815.143	4-6-307	2994, 2995	Rep. Ch. 233, Sec. 3, L. 1969
2815.144	4-6-308	3012-3021	Rep. Ch. 341, Sec. 30, L. 1969
2815.145	4-6-309	3025-3033	Rep. Ch. 341, Sec. 30, L. 1969
2815.146-2815.148	Rep. Ch. 387, Sec. 121, L. 1975	3040-3043	Rep. Ch. 144, Sec. 1, L. 1971
2815.149	4-6-302	3076	Rep. Ch. 51, Sec. 2, L. 1971
2815.150	4-6-201	3101-3104	Rep. Ch. 100, Sec. 25, L. 1977
2815.151	4-1-306	3115.1	82A-1602.9
2815.152, 2815.153	Rep. Ch. 387, Sec. 121, L. 1975	3115.2	Rep. Ch. 350, Sec. 363, L. 1974
2815.154	4-1-406	3115.14	Rep. Ch. 350, Sec. 363, L. 1974
2815.155	Rep. Ch. 387, Sec. 121, L. 1975	3115.25	Rep. Ch. 350, Sec. 363, L. 1974
2815.156	Rep. Ch. 147, Sec. 242, L. 1963	3116-3124	Rep. Ch. 338, Sec. 43, L. 1969
2815.158	Rep. Ch. 387, Sec. 121, L. 1975	3125	82A-1602.20
2815.159	4-1-104	3138	82A-1602.7
2815.160-2815.163	Rep. Ch. 387, Sec. 121, L. 1975	3139	Rep. Ch. 350, Sec. 363, L. 1974
2819, 2820	Rep. Ch. 23, Sec. 88, L. 1975	3147	Rep. Ch. 516, Sec. 5, L. 1977
2821-2822	Rep. Ch. 177, Sec. 51, L. 1965	3151	Rep. Ch. 350, Sec. 363, L. 1974
2823-2825	Rep. Ch. 23, Sec. 88, L. 1975	3160	Rep. Ch. 350, Sec. 363, L. 1974
2827-2830	Rep. Ch. 23, Sec. 88, L. 1975	3163	Rep. Ch. 350, Sec. 363, L. 1974
2831	Rep. Ch. 253, Sec. 2, L. 1973	3173	82A-1602.21
2836	Rep. Ch. 550, Sec. 9, L. 1977	3185	Rep. Ch. 101, Sec. 36, L. 1977
2837	Rep. Ch. 492, Sec. 2, L. 1973	3195-3197	Rep. Ch. 101, Sec. 36, L. 1977
2838	Rep. Ch. 550, Sec. 9, L. 1977	3217	82A-1602.24
2839	Rep. Ch. 493, Sec. 2, L. 1973	3221, 3222	Rep. Ch. 350, Sec. 363, L. 1974
2839.1	Rep. Ch. 550, Sec. 9, L. 1977	3228.4	82A-1602.8
2841	Rep. Ch. 282, Sec. 2, L. 1973	3228.10	Rep. Ch. 177, Sec. 51, L. 1965
2844-2846	Rep. Ch. 550, Sec. 9, L. 1977	3228.22	Rep. Ch. 350, Sec. 363, L. 1974
2847-2852	Rep. Ch. 443, Sec. 6, L. 1973	3228.24	82A-1602.5
2854-2859	Rep. Ch. 443, Sec. 6, L. 1973	3229	82A-1602.3
2862	Rep. Ch. 154, Sec. 2, L. 1973	3232	Rep. Ch. 138, Sec. 5, L. 1967
2866, 2867	Rep. Ch. 23, Sec. 88, L. 1975	3241.1-3241.7	Rep. Ch. 118, Sec. 32, L. 1969
2871, 2872	Rep. Ch. 23, Sec. 88, L. 1975	3241.9-3241.12	Rep. Ch. 118, Sec. 32, L. 1969
2874	Rep. Ch. 445, Sec. 2, L. 1973	3253-3255	Rep. Ch. 310, Sec. 201, L. 1974
2875	Rep. Ch. 444, Sec. 2, L. 1973	3258	Rep. Ch. 93, Sec. 44, L. 1969
2879, 2880	Rep. Ch. 23, Sec. 88, L. 1975	3259, 3260	Rep. Ch. 310, Sec. 201, L. 1974
2882, 2883	Rep. Ch. 23, Sec. 88, L. 1975	3264	Rep. Ch. 310, Sec. 201, L. 1974
2890	Rep. Ch. 251, Sec. 2, L. 1973	3291	Rep. Ch. 147, Sec. 242, L. 1963
2891	Rep. Ch. 106, Sec. 1, L. 1973	3292	Rep. Ch. 93, Sec. 44, L. 1969
2893-2895	Rep. Ch. 106, Sec. 1, L. 1973	3293	Rep. Ch. 233, Sec. 9, L. 1977
2907	Rep. Ch. 106, Sec. 1, L. 1973	3298.1-	
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2912	Rep. Ch. 471, Sec. 2, L. 1973	3308	Rep. Ch. 310, Sec. 201, L. 1974
		3310	Rep. Ch. 177, Sec. 51, L. 1965
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		3351-3354	Rep. Ch. 12, Sec. 59, L. 1977



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3360-3373	Rep. Ch. 32, Sec. 1, L. 1953	3722	Rep. Ch. 56, Sec. 1, L. 1969
3392	Rep. Ch. 310, Sec. 201, L. 1974	3724	Rep. Ch. 9, Sec. 54, L. 1977
3420-3424	Rep. Ch. 310, Sec. 6, L. 1971	3731, 3732	Rep. Ch. 38, Sec. 2, L. 1963
3426-3434	Rep. Ch. 310, Sec. 6, L. 1971	3736	Rep. Ch. 38, Sec. 2, L. 1963
3452	Rep. Ch. 267, Sec. 34, L. 1974	3745, 3746	Rep. Ch. 221, Sec. 16, L. 1971
3454, 3455	Rep. Ch. 99, Sec. 43, L. 1969	3749	Rep. Ch. 511, Sec. 58, L. 1973
3457-3468	Rep. Ch. 267, Sec. 34, L. 1974	3779	Rep. Ch. 339, Sec. 3, L. 1974
3473-3476	Rep. Ch. 267, Sec. 34, L. 1974	3780	Rep. Ch. 315, Sec. 24, L. 1974
3478	Rep. Ch. 267, Sec. 34, L. 1974	3782	Rep. Ch. 315, Sec. 24, L. 1974
3486-3508	Rep. Ch. 267, Sec. 34, L. 1974	3784	Rep. Ch. 129, Sec. 1 and Ch. 212, Sec. 3, L. 1963
3509	Rep. Ch. 188, Sec. 4, L. 1959	3786-3788	Rep. Ch. 129, Sec. 1, L. 1963
3510	Rep. Ch. 267, Sec. 34, L. 1974	3789	Rep. Ch. 315, Sec. 24, L. 1974
3512-3518	Rep. Ch. 267, Sec. 34, L. 1974	3792	72-101.1
3520-3524	Rep. Ch. 267, Sec. 34, L. 1974	3815	Rep. Ch. 93, Sec. 44, L. 1969
3525	Rep. Ch. 188, Sec. 4, L. 1959	3818	Rep. Ch. 315, Sec. 24, L. 1974
3526-3535	Rep. Ch. 267, Sec. 34, L. 1974	3821	Rep. Ch. 199, Sec. 101, L. 1965
3537-3546	Rep. Ch. 267, Sec. 34, L. 1974	3847.15	Rep. Ch. 315, Sec. 24, L. 1974
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3560	Rep. Ch. 218, Sec. 173, L. 1974	3847.20	Rep. Ch. 315, Sec. 24, L. 1974
3562 to		3847.29	Rep. Ch. 148, Sec. 2, L. 1971
3565	Rep. Ch. 218, Sec. 173, L. 1974	3880	Rep. Ch. 315, Sec. 24, L. 1974; Ch. 339, Sec. 3, L. 1974
3567	Rep. Ch. 218, Sec. 173, L. 1974	3896	Rep. Ch. 315, Sec. 24, L. 1974
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3572.2	3-24-139	3913.1, 3913.2	Rep. Ch. 153, Sec. 14, L. 1965
3573	Rep. Ch. 218, Sec. 173, L. 1974	3913.3	Rep. Ch. 174, Sec. 16, L. 1961
3575.3	Rep. Ch. 147, Sec. 242, L. 1963	3913.4, 3913.5	Rep. Ch. 77, Sec. 13, L. 1977
3589	Rep. Ch. 39, Sec. 9, L. 1973	3913.10	Rep. Ch. 77, Sec. 13, L. 1977
3592.1-3592.9	Rep. Ch. 442, Sec. 9, L. 1973	3913.14-3913.19	Rep. Ch. 77, Sec. 13, L. 1977
3592.10,		3913.21, 3913.22	Rep. Ch. 77, Sec. 13, L. 1977
3592.11	Rep. Ch. 218, Sec. 173, L. 1974	3913.24	Rep. Ch. 77, Sec. 13, L. 1977
3592.13-		3914-3946	Rep. Ch. 256, Sec. 2, L. 1973
3592.16	Rep. Ch. 218, Sec. 173, L. 1974	4026-4050	Rep. Ch. 251, Sec. 28, L. 1961
3592.17	Rep. Ch. 177, Sec. 51, L. 1965	4053	Rep. Ch. 251, Sec. 28, L. 1961
3592.18-		4056-4078	Rep. Ch. 250, Sec. 24, L. 1963
3592.41	Rep. Ch. 218, Sec. 173, L. 1974	4079-4127	Rep. Ch. 264, Sec. 10-102, L. 1963
3592.44-		4134-4138	Rep. Ch. 264, Sec. 10-102, L. 1963
3592.54	Rep. Ch. 218, Sec. 173, L. 1974	4139.4	Rep. Ch. 101, Sec. 36, L. 1977
3593, 3594	Rep. Ch. 361, Sec. 7, L. 1969	4139.6	Rep. Ch. 93, Sec. 44, L. 1969
3598	Rep. Ch. 390, Sec. 13, L. 1973	4139.12	Rep. Ch. 350, Sec. 363, L. 1974
3602.1-		4139.13	Rep. Ch. 541, Sec. 4, L. 1977
3602.6	Rep. Ch. 218, Sec. 173, L. 1974	4142	Rep. Ch. 101, Sec. 36, L. 1977
3608, 3609	Rep. Ch. 218, Sec. 173, L. 1974	4147	74-708
3612	Rep. Ch. 218, Sec. 173, L. 1974	4148	74-710
3622	Rep. Ch. 218, Sec. 173, L. 1974	4149	74-711
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3634	Rep. Ch. 5, Sec. 496, L. 1971	4152-4154	Rep. Ch. 263, Sec. 17, L. 1977
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3654	Rep. Ch. 511, Sec. 58, L. 1973		
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4212-4229	Rep. Ch. 99, Sec. 43, L. 1969	4955, 4956	Rep. Ch. 99, Sec. 16, L. 1973
4230.1	Rep. Ch. 99, Sec. 43, L. 1969	4974, 4975	Rep. Ch. 99, Sec. 16, L. 1973
4232	Rep. Ch. 99, Sec. 43, L. 1969	4980-4994	Rep. Ch. 500, Sec. 20, L. 1973
4234-4238	Rep. Ch. 99, Sec. 43, L. 1969	4998	Rep. Ch. 260, Sec. 12, L. 1967
4240-4243	Rep. Ch. 99, Sec. 43, L. 1969	5010	Rep. Ch. 40, Sec. 2, L. 1973
4244	Rep. Ch. 160, Sec. 24, L. 1965	5016, 5017	Rep. Ch. 67, Sec. 11, L. 1967
4245	Rep. Ch. 99, Sec. 43, L. 1969	5039.48	Rep. Ch. 119, Sec. 1, L. 1974
4246	Rep. Ch. 160, Sec. 24, L. 1965	5039.56	Rep. Ch. 99, Sec. 43, L. 1969
4247-4257	Rep. Ch. 99, Sec. 43, L. 1969	5080, 5080.1	Rep. Ch. 233, Sec. 9, L. 1977
4258	Rep. Ch. 160, Sec. 24, L. 1965	5094.9	Rep. Ch. 344, Sec. 60, L. 1977; Ch. 429, Sec. 12, L. 1977
4259-4264	Rep. Ch. 99, Sec. 43, L. 1969	5108.2	Rep. Ch. 335, Sec. 21, L. 1974, effective July 1, 1975
4265.1	3-3402	5108.4	Rep. Ch. 335, Sec. 21, L. 1974, effective July 1, 1975
4273	Rep. Ch. 160, Sec. 24, L. 1965	5108.8	Rep. Ch. 224, Sec. 17, L. 1977; Ch. 456, Sec. 42, L. 1977
4276	Rep. Ch. 307, Sec. 27, L. 1967	5126	Rep. Ch. 264, Sec. 3, L. 1975
4279	Rep. Ch. 309, Sec. 31, L. 1977	5148.1	Unconstitutional, 134 M 355, 332 P 2d 501
4382	Rep. Ch. 100, Sec. 58, L. 1973	5158.2	Rep. Ch. 147, Sec. 242, L. 1963
4396.1	Rep. Ch. 194, Sec. 13, L. 1967	5219-5222	Rep. Ch. 405, Sec. 120, L. 1973
4405	Rep. Ch. 194, Sec. 13, L. 1967	5278.7	Rep. Ch. 413, Sec. 5, L. 1973
4448	S. M.R.Civ.P., Rule 4 D	5394	Rep. Ch. 364, Sec. 15, L. 1977
4453	Rep. Ch. 298, Sec. 5, L. 1974	5419	Rep. Ch. 364, Sec. 15, L. 1977
4455	Rep. Ch. 68, Sec. 10, L. 1967	5452	Rep. Ch. 348, Sec. 107, L. 1974
4463	Rep. Ch. 27, Sec. 2, L. 1975	5508	Rep. Ch. 67, Sec. 11, L. 1967
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4465.13	Rep. Ch. 391, Sec. 113, L. 1973	5654	16-2927
4465.28	Rep. Ch. 136, Sec. 6, L. 1971	5668.15	Rep. Ch. 198, Sec. 1, L. 1973
4479	Rep. Ch. 197, Sec. 12-109, L. 1965	5668.16	Rep. Ch. 61, Sec. 11, L. 1977
4486.1, 4486.2	Rep. Ch. 197, Sec. 12-109, L. 1965	5668.19-5668.21	Rep. Ch. 298, Sec. 9, L. 1973
4521	Rep. Ch. 37, Sec. 53, L. 1977	5668.22, 5668.23	Rep. Ch. 147, Sec. 242, L. 1963
4530	Rep. Ch. 225, Sec. 3, L. 1974	5668.24-5668.27	Rep. Ch. 298, Sec. 9, L. 1973
4532, 4533	Rep. Ch. 225, Sec. 3, L. 1974	5668.28	Rep. Ch. 147, Sec. 242, L. 1963
4534	Rep. Ch. 37, Sec. 53, L. 1977	5668.29	Rep. Ch. 298, Sec. 9, L. 1973
4542-4544	Rep. Ch. 198, Sec. 98, L. 1967	5668.31, 5668.32	Rep. Ch. 298, Sec. 9, L. 1973
4562.1-4562.3	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963	5668.34	Rep. Ch. 298, Sec. 9, L. 1973
4594	Rep. Ch. 136, Sec. 1, L. 1961	5685	Rep. Ch. 466, Sec. 38, L. 1975
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4631	Rep. Ch. 5, Sec. 2, 2nd Ex. L. 1971	5696	Rep. Ch. 232, Sec. 12, L. 1963
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4729	Rep. Ch. 100, Sec. 58, L. 1973; Ch. 123, Sec. 23, L. 1973	5706	Rep. Ch. 33, Sec. 25, L. 1977
4764	Rep. Ch. 184, Sec. 64, L. 1977	5707	Rep. Ch. 232, Sec. 12, L. 1963
4813.2	Rep. Ch. 264, Sec. 10-102, L. 1963	5709, 5710	Rep. Ch. 536, Sec. 45, L. 1975
4814.1	Rep. Ch. 348, Sec. 107, L. 1974	5711, 5712	Rep. Ch. 232, Sec. 12, L. 1963
4845, 4846	Rep. Ch. 197, Sec. 12-109, L. 1965	5713, 5714	Rep. Ch. 536, Sec. 45, L. 1975
4849	Rep. Ch. 530, Sec. 27, L. 1977	5715	Rep. Ch. 232, Sec. 12, L. 1963
4850	Rep. Ch. 184, Sec. 64, L. 1977	5716	Rep. Ch. 536, Sec. 45, L. 1975
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4860	Rep. Ch. 68, Sec. 10, L. 1967	5719	Rep. Ch. 536, Sec. 45, L. 1975
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5802	Rep. Ch. 293, Sec. 23, L. 1975	6757	62-617
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5837	Rep. Ch. 512, Sec. 31, L. 1975	6973	Rep. Ch. 263, Sec. 15, L. 1975
5856-5866	Rep. Ch. 199, Sec. 1, L. 1961	6974, 6975	Rep. Ch. 365, Sec. 2, L. 1974
5868-5875	Rep. Ch. 365, Sec. 2, L. 1974	6976, 6977	Rep. Ch. 263, Sec. 15, L. 1975
5877	Rep. Ch. 365, Sec. 2, L. 1974	6980, 6981	Rep. Ch. 365, Sec. 2, L. 1974
5877.1-5877.4	Rep. Ch. 365, Sec. 2, L. 1974	6982	Rep. Ch. 263, Sec. 15, L. 1975
5878-5881	Rep. Ch. 365, Sec. 2, L. 1974	6986-6989	Rep. Ch. 365, Sec. 2, L. 1974
5882, 5883	Rep. Ch. 263, Sec. 15, L. 1975	6990-6994	Rep. Ch. 263, Sec. 15, L. 1975
5885-5888	Rep. Ch. 365, Sec. 2, L. 1974	6995	Rep. Ch. 365, Sec. 2, L. 1974
5889	Rep. Ch. 263, Sec. 15, L. 1975	6996	Rep. Ch. 263, Sec. 15, L. 1975
5890-5899	Rep. Ch. 184, Sec. 1, L. 1975	6998-7003	Rep. Ch. 365, Sec. 2, L. 1974
5900-5915	Rep. Ch. 300, Sec. 143, L. 1967	7004, 7005	Rep. Ch. 263, Sec. 15, L. 1975
5917	Rep. Ch. 300, Sec. 143, L. 1967	7007	Rep. Ch. 263, Sec. 15, L. 1975
5918-5928	Rep. Ch. 300, Sec. 143, L. 1967	7008-7012	Rep. Ch. 365, Sec. 2, L. 1974
5930-5953	Rep. Ch. 300, Sec. 143, L. 1967	7014	Rep. Ch. 365, Sec. 2, L. 1974
5954	Rep. Ch. 264, Sec. 10-102, L. 1963	7016	Rep. Ch. 365, Sec. 2, L. 1974
5955	Rep. Ch. 300, Sec. 143, L. 1967	7017	Rep. Ch. 263, Sec. 15, L. 1975
5956	Rep. Ch. 264, Sec. 10-102, L. 1963	7025	Rep. Ch. 365, Sec. 2, L. 1974
5957-6013	Rep. Ch. 300, Sec. 143, L. 1967	7029-7032	Rep. Ch. 365, Sec. 2, L. 1974
6014.8	Rep. Ch. 431, Sec. 176, L. 1975	7033	Rep. Ch. 516, Sec. 10, L. 1975
6014.59-6014.61	Rep. Ch. 431, Sec. 176, L. 1975	7040	Rep. Ch. 263, Sec. 15, L. 1975
6014.63	Rep. Ch. 129, Sec. 1, L. 1963	7042	Rep. Ch. 365, Sec. 2, L. 1974
6014.64	Rep. Ch. 431, Sec. 176, L. 1975	7050, 7051	Rep. Ch. 365, Sec. 2, L. 1974
6014.76	Rep. Ch. 431, Sec. 176, L. 1975	7052	Rep. Ch. 263, Sec. 15, L. 1975
6014.91, 6014.92	Rep. Ch. 264, Sec. 10-102, L. 1963	7053, 7054	Rep. Ch. 365, Sec. 2, L. 1974
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6014.97	Rep. Ch. 431, Sec. 176, L. 1975	7057, 7058	Rep. Ch. 365, Sec. 2, L. 1974
6014.100, 6014.101	Rep. Ch. 264, Sec. 10-102, L. 1963	7060	Rep. Ch. 263, Sec. 15, L. 1975
6014.127	Rep. Ch. 264, Sec. 10-102, L. 1963	7061-7064	Rep. Ch. 365, Sec. 2, L. 1974
6014.149-6014.151	Rep. Ch. 431, Sec. 176, L. 1975	7065, 7066	Rep. Ch. 263, Sec. 15, L. 1975
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6109.1-6109.11	Rep. Ch. 431, Sec. 176, L. 1975	7069	Rep. Ch. 365, Sec. 2, L. 1974
6109.12-6109.39	Rep. Ch. 236, Sec. 30, L. 1963	7070, 7071	Rep. Ch. 263, Sec. 15, L. 1975
6155	Rep. Ch. 43, Sec. 4, L. 1959	7072-7075	Rep. Ch. 365, Sec. 2, L. 1974
6236	Rep. Ch. 67, Sec. 11 and Ch. 68, Sec. 10, L. 1967	7081-7088	Rep. Ch. 365, Sec. 2, L. 1974
6355.51	Rep. Ch. 431, Sec. 176, L. 1975	7092	Rep. Ch. 263, Sec. 15, L. 1975
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6394	Rep. Ch. 342, Sec. 3, L. 1973	7098-7106	Rep. Ch. 452, Sec. 46, L. 1973
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6445	Rep. Ch. 218, Sec. 173, L. 1974	7117, 7118	Rep. Ch. 253, Sec. 108, L. 1974
6450-6468	Rep. Ch. 198, Sec. 98, L. 1967	7119-7124.1	Rep. Ch. 452, Sec. 46, L. 1973
6535	Rep. Ch. 264, Sec. 10-102, L. 1963	7125-7131	Rep. Ch. 452, Sec. 46, L. 1973
6537-6539	Rep. Ch. 264, Sec. 10-102, L. 1963	7133, 7134	Rep. Ch. 452, Sec. 46, L. 1973
6586-6589	Rep. Ch. 315, Sec. 24, L. 1974	7251	Rep. Ch. 460, Sec. 52, L. 1977
		7362	Rep. Ch. 460, Sec. 52, L. 1977
		7591, 7592	Rep. Ch. 264, Sec. 10-102, L. 1963
		7594-7597	Rep. Ch. 264, Sec. 10-102, L. 1963
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7633	Rep. Ch. 264, Sec. 10-102, L. 1963	9087, 9088	Rep. Ch. 13, Sec. 84, L. 1961
7741	Rep. Ch. 313, Sec. 45, L. 1977	9090	Rep. Ch. 13, Sec. 84, L. 1961
7744	Rep. Ch. 313, Sec. 45, L. 1977	9097	Rep. Ch. 13, Sec. 84, L. 1961
7828-7834	Rep. Ch. 264, Sec. 10-102, L. 1963	9099	S. Sup. Ct. R., 34 St. Rptr. 26
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7977	74-707	9110, 9111	Rep. Ch. 13, Sec. 84, L. 1961
8210-8218	Rep. Ch. 264, Sec. 10-102, L. 1963	9112	S. M.R.Civ.P., Rule 4 D
8224	Rep. Ch. 264, Sec. 10-102, L. 1963	9113, 9114	Rep. Ch. 189, Sec. 2, L. 1963
8265, 8266	Rep. Ch. 513, Sec. 32, L. 1973	9115, 9116	S. M.R.Civ.P., Rule 4 D
8273	Rep. Ch. 513, Sec. 32, L. 1973	9117-9119	Rep. Ch. 13, Sec. 84, L. 1961
8275-8285	Rep. Ch. 264, Sec. 10-102, L. 1963	9121, 9122	Rep. Ch. 13, Sec. 84, L. 1961
8289, 8290	Rep. Ch. 264, Sec. 10-102, L. 1963	9123	Rep. Ch. 189, Sec. 2, L. 1963
8290.1	Rep. Ch. 264, Sec. 10-102, L. 1963	9125-9138	Rep. Ch. 13, Sec. 84, L. 1961
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8295	Rep. Ch. 264, Sec. 10-102, L. 1963	9144	Rep. Ch. 13, Sec. 84, L. 1961
8298	Rep. Ch. 264, Sec. 10-102, L. 1963	9146-9148	Rep. Ch. 13, Sec. 84, L. 1961
8306-8317	Rep. Ch. 264, Sec. 10-102, L. 1963	9151-9162	Rep. Ch. 13, Sec. 84, L. 1961
8336-8338	Rep. Ch. 464, Sec. 1, L. 1977	9164-9166	Rep. Ch. 13, Sec. 84, L. 1961
8381	Rep. Ch. 264, Sec. 10-102, L. 1963	9169-9171	Rep. Ch. 13, Sec. 84, L. 1961
8393-8395	Rep. Ch. 32, Sec. 1, L. 1953	9174-9176	Rep. Ch. 13, Sec. 84, L. 1961
8396-8400	Rep. Ch. 264, Sec. 10-102, L. 1963	9178-9187	Rep. Ch. 13, Sec. 84, L. 1961
8401-8493	Rep. Ch. 264, Sec. 10-102, L. 1963	9189	Rep. Ch. 13, Sec. 84, L. 1961
8495-8597	Rep. Ch. 264, Sec. 10-102, L. 1963	9191	Rep. Ch. 13, Sec. 84, L. 1961
8603	Rep. Ch. 185, Sec. 17, L. 1977	9239	Rep. Ch. 13, Sec. 84, L. 1961
8607-8611	Rep. Ch. 264, Sec. 10-102, L. 1963	9257	Rep. Ch. 299, Sec. 7, L. 1977
8674-8680	Rep. Ch. 264, Sec. 10-102, L. 1963	9292	Rep. Ch. 264, Sec. 10-102, L. 1963
8685	Rep. Ch. 200, Sec. 7, L. 1963	9295	Rep. Ch. 300, Sec. 143, L. 1967
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8798	Rep. Ch. 470, Sec. 14, L. 1973	9320-9322	Rep. Ch. 13, Sec. 84, L. 1961
8820	Rep. Ch. 470, Sec. 14, L. 1973	9324	Rep. Ch. 13, Sec. 84, L. 1961
8839	Rep. Ch. 68, Sec. 10, L. 1967	9326-9328	Rep. Ch. 13, Sec. 84, L. 1961
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8864	Rep. Ch. 344, Sec. 60, L. 1977	9345-9347	Rep. Ch. 13, Sec. 84, L. 1961
8905-8907	Rep. Ch. 110, Sec. 4, L. 1969	9359-9361	Rep. Ch. 13, Sec. 84, L. 1961
8911, 8912	Rep. Ch. 110, Sec. 4, L. 1969	9365	Rep. Ch. 13, Sec. 84, L. 1961
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9485	Rep. Ch. 189, Sec. 2, L. 1963	10264	Rep. Ch. 263, Sec. 15, L. 1975
9567-9569	Rep. Ch. 263, Sec. 15, L. 1975	10265-10267	Rep. Ch. 365, Sec. 2, L. 1974
9639	Rep. Ch. 420, Sec. 21, L. 1975	10267.1	Rep. Ch. 365, Sec. 2, L. 1974
9641	Rep. Ch. 420, Sec. 21, L. 1975	10268-10280	Rep. Ch. 365, Sec. 2, L. 1974
9644, 9645	Rep. Ch. 420, Sec. 21, L. 1975	10281	Rep. Ch. 263, Sec. 15, L. 1975
9710	Rep. Ch. 344, Sec. 60, L. 1977	10285	Rep. Ch. 365, Sec. 2, L. 1974
9731	S. M.R.App.Civ.P., Rule 1	10287	Rep. Ch. 365, Sec. 2, L. 1974
9732	S. M.R.App.Civ.P., Rule 5	10288-10293	Rep. Ch. 263, Sec. 15, L. 1975
9733	S. M.R.App.Civ.P., Rules 4, 6	10294	Rep. Ch. 272, Sec. 1, L. 1969; Ch. 263, Sec. 15, L. 1975
9734	S. M.R.App.Civ.P., Rule 6		
9735-9738	Rep. Ch. 13, Sec. 84, L. 1961	10295-10306	Rep. Ch. 263, Sec. 15, L. 1975
9739	S. M.R.App.Civ.P., Rule 7	10307-10314	Rep. Ch. 365, Sec. 2, L. 1974
9740	S. M.R.App.Civ.P., Rules 6, 7	10315-10317	Rep. Ch. 263, Sec. 15, L. 1975
9742	S. M.R.App.Civ.P., Rule 7	10318-10351	Rep. Ch. 365, Sec. 2, L. 1974
9743	S. M.R.App.Civ.P., Rule 6	10365	Rep. Ch. 365, Sec. 2, L. 1974
9744	S. M.R.App.Civ.P., Rule 13	10368-10370	Rep. Ch. 365, Sec. 2, L. 1974
9745	S. M.R.App.Civ.P., Rule 1	10375, 10376	Rep. Ch. 365, Sec. 2, L. 1974
9746	S. M.R.App.Civ.P., Rules 9, 10, 25	10401-10404	Rep. Ch. 365, Sec. 2, L. 1974
9747	S. M.R.App.Civ.P., Rules 3, 4, 6, 9-11, 25	10405	Rep. Ch. 263, Sec. 15, L. 1975
9748	S. M.R.App.Civ.P., Rule 12	10406-10408	Rep. Ch. 365, Sec. 2, L. 1974
9749	S. M.R.App.Civ.P., Rules 9, 10, 25	10409	Rep. Ch. 263, Sec. 15, L. 1975
9750	S. M.R.App.Civ.P., Rule 2	10410-10416	Rep. Ch. 365, Sec. 2, L. 1974
9751	S. M.R.App.Civ.P., Rule 14	10416.1	Rep. Ch. 365, Sec. 2, L. 1974
9752	S. M.R.App.Civ.P., Rule 15	10417-10420	Rep. Ch. 365, Sec. 2, L. 1975
9753	S. M.R.App.Civ.P., Rule 16	10421	Rep. Ch. 263, Sec. 15, L. 1975
9770-9772	Rep. Ch. 13, Sec. 84, L. 1961	10422, 10423	Rep. Ch. 365, Sec. 2, L. 1974
9774	Rep. Ch. 13, Sec. 84, L. 1961	10425-10434	Rep. Ch. 365, Sec. 2, L. 1974
9778-9781	Rep. Ch. 13, Sec. 84, L. 1961	10435-10443	Rep. Ch. 263, Sec. 15, L. 1975
9784	Rep. Ch. 13, Sec. 84, L. 1961	10444-10454	Rep. Ch. 365, Sec. 2, L. 1974
9792	Rep. Ch. 13, Sec. 84, L. 1961	10455	Rep. Ch. 263, Sec. 15, L. 1975
9820	Rep. Ch. 13, Sec. 84, L. 1961	10456, 10457	Rep. Ch. 365, Sec. 2, L. 1974
9922-9932	Rep. Ch. 300, Sec. 143, L. 1967	10458	Rep. Ch. 263, Sec. 15, L. 1975
9953	Rep. Ch. 453, Sec. 2, L. 1973	10463	Rep. Ch. 365, Sec. 2, L. 1974
10012 to 10016	Rep. Ch. 263, Sec. 15, L. 1975	10464	Rep. Ch. 263, Sec. 15, L. 1975
10018-10030	Rep. Ch. 365, Sec. 2, L. 1974	10465-	
10031	Rep. Ch. 263, Sec. 15, L. 1975	10479.1	Rep. Ch. 328, Sec. 13, L. 1974
10032	Rep. Ch. 365, Sec. 2, L. 1974	10610	Rep. Ch. 263, Sec. 15, L. 1975
10035	Rep. Ch. 365, Sec. 2, L. 1974	10620	Rep. Ch. 13, Sec. 84, L. 1961
10039-10046	Rep. Ch. 365, Sec. 2, L. 1974	10622	Rep. Ch. 154, Sec. 1, L. 1959
10048	Rep. Ch. 365, Sec. 2, L. 1974	10643-10658	Rep. Ch. 13, Sec. 84, L. 1961
10049, 10050	Rep. Ch. 263, Sec. 15, L. 1975	10685	Rep. Ch. 33, Sec. 25, L. 1977
10053-10055	Rep. Ch. 263, Sec. 15, L. 1975	10686-10692	Rep. Ch. 13, Sec. 84, L. 1961
10056-10058	Rep. Ch. 365, Sec. 2, L. 1974	10710-10712	Rep. Ch. 513, Sec. 32, L. 1973
10059	Rep. Ch. 263, Sec. 15, L. 1975	10714-10734	Rep. Ch. 513, Sec. 32, L. 1973
10060-10069	Rep. Ch. 365, Sec. 2, L. 1974	10735,	
10071-10119	Rep. Ch. 365, Sec. 2, L. 1974	10736	Rep. Ch. 513, Sec. 32, L. 1973
10121-10132	Rep. Ch. 365, Sec. 2, L. 1974	10737-10746	Rep. Ch. 513, Sec. 32, L. 1973
10133	Rep. Ch. 263, Sec. 15, L. 1975	10747-10767	Rep. Ch. 334, Sec. 49, L. 1977
10135-10139	Rep. Ch. 365, Sec. 2, L. 1974	10768	Rep. Ch. 480, Sec. 23, L. 1975
10144-10174	Rep. Ch. 365, Sec. 2, L. 1974	10769, 10770	Rep. Ch. 334, Sec. 49, L. 1977
10176-10181	Rep. Ch. 365, Sec. 2, L. 1974	10771, 10772	Rep. Ch. 480, Sec. 23, L. 1975
10183	Rep. Ch. 263, Sec. 15, L. 1975	10773, 10774	Rep. Ch. 481, Sec. 2, L. 1975
10184-10189	Rep. Ch. 365, Sec. 2, L. 1974	10775, 10776	Rep. Ch. 480, Sec. 23, L. 1975
10191	Rep. Ch. 263, Sec. 15, L. 1975	10777	23-4731
10192, 10193	Rep. Ch. 365, Sec. 2, L. 1974	10778	Rep. Ch. 334, Sec. 49, L. 1977
10195-10206	Rep. Ch. 365, Sec. 2, L. 1974	10779-10782	Rep. Ch. 480, Sec. 23, L. 1975
10210-10256	Rep. Ch. 365, Sec. 2, L. 1974	10783	23-4737
10256.1	Rep. Ch. 365, Sec. 2, L. 1974	10784	Rep. Ch. 334, Sec. 49, L. 1977
		10785	Rep. Ch. 188, Sec. 6, L. 1975
		10786-10789	Rep. Ch. 334, Sec. 49, L. 1977
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10791	Rep. Ch. 334, Sec. 49, L. 1977	11231-11233	Rep. Ch. 513, Sec. 32, L. 1973
10792	23-4746	11235-11238	Rep. Ch. 513, Sec. 32, L. 1973
10793-10795	Rep. Ch. 334, Sec. 49, L. 1977	11239	Rep. Ch. 314, Sec. 14, L. 1969
10796	Rep. Ch. 480, Sec. 23, L. 1975	11240-11242	Rep. Ch. 513, Sec. 32, L. 1973
10797-10800	Rep. Ch. 334, Sec. 49, L. 1977	11243	46-247
10801	Rep. Ch. 480, Sec. 23, L. 1975	11244	46-248
10802	Rep. Ch. 334, Sec. 49, L. 1977	11248-11250	Rep. Ch. 513, Sec. 32, L. 1973
10803	23-4757	11253	72-671
10804	23-4758	11254	Rep. Ch. 39, Sec. 1, L. 1969
10805	23-4759	11255-11258	Rep. Ch. 513, Sec. 32, L. 1973
10806	23-4760	11261-11265	Rep. Ch. 513, Sec. 32, L. 1973
10808	Rep. Ch. 480, Sec. 23, L. 1975	11267-11274	Rep. Ch. 513, Sec. 32, L. 1973
10809	23-4762	11276,	
10810	23-4763	11277	Rep. Ch. 513, Sec. 32, L. 1973
10811	23-4764	11278	72-507
10812	23-4765	11279	Rep. Ch. 513, Sec. 32, L. 1973
10813	23-4766	11280	Rep. Ch. 513, Sec. 32, L. 1973
10814	23-4767	11281-11283	Rep. Ch. 359, Sec. 77, L. 1977
10815	Rep. Ch. 334, Sec. 49, L. 1977	11283.1	Rep. Ch. 513, Sec. 32, L. 1973
10816	Rep. Ch. 480, Sec. 23, L. 1975	11284-11295	Rep. Ch. 513, Sec. 32, L. 1973
10817	23-4770	11297-11301	Rep. Ch. 513, Sec. 32, L. 1973
10818	23-4771	11303	Rep. Ch. 411, Sec. 2, L. 1977
10819	Rep. Ch. 480, Sec. 23, L. 1975	11305	Rep. Ch. 513, Sec. 32, L. 1973
10820	Rep. Ch. 334, Sec. 49, L. 1977	11310-11313	Rep. Ch. 513, Sec. 32, L. 1973
10821-10833	Rep. Ch. 513, Sec. 32, L. 1973	11315-11317	Rep. Ch. 513, Sec. 32, L. 1973
10834-10852	Rep. Ch. 513, Sec. 32, L. 1973	11317.9	Rep. Ch. 513, Sec. 32, L. 1973
10853-10859	Rep. Ch. 513, Sec. 32, L. 1973	11317.11	Rep. Ch. 513, Sec. 32, L. 1973
10860	16-3607	11318-11336	Rep. Ch. 513, Sec. 32, L. 1973
10861-10900	Rep. Ch. 513, Sec. 32, L. 1973	11346-11425	Rep. Ch. 513, Sec. 32, L. 1973
10901	Rep. Ch. 518, Sec. 29, L. 1977	11427-11442	Rep. Ch. 513, Sec. 32, L. 1973
10902	51-506	11445-11458	Rep. Ch. 513, Sec. 32, L. 1973
10903	Rep. Ch. 513, Sec. 32, L. 1973	11458.1	15-22-141
10904-10911	Rep. Ch. 518, Sec. 29, L. 1977	11458.2	15-22-142
10912	51-516	11458.3	15-22-143
10913	Rep. Ch. 518, Sec. 29, L. 1977	11458.4	15-22-144
10914	51-517	11459-11463	Rep. Ch. 513, Sec. 32, L. 1973
10915	Rep. Ch. 518, Sec. 29, L. 1977	11464	Rep. Ch. 197, Sec. 12-109, L. 1965
10916-10925	Rep. Ch. 513, Sec. 32, L. 1973	11465-11470	Rep. Ch. 513, Sec. 32, L. 1973
10928-10931	Rep. Ch. 513, Sec. 32, L. 1973	11472	Rep. Ch. 513, Sec. 32, L. 1973
10934-		11473	Rep. Ch. 174, Sec. 3, L. 1963
10969	Rep. Ch. 513, Sec. 32, L. 1973	11473.1	Rep. Ch. 513, Sec. 32, L. 1973
10970.1-		11474-11519	Rep. Ch. 513, Sec. 32, L. 1973
10970.3	Rep. Ch. 513, Sec. 32, L. 1973	11521-11529	Rep. Ch. 513, Sec. 32, L. 1973
10973-11022	Rep. Ch. 513, Sec. 32, L. 1973	11531-11541	Rep. Ch. 513, Sec. 32, L. 1973
11023, 11024	Rep. Ch. 359, Sec. 77, L. 1977	11549	46-3002
11025-11039	Rep. Ch. 513, Sec. 32, L. 1973	11550	46-3004
11039.1	Rep. Ch. 114, Sec. 1, L. 1971	11551	Rep. Ch. 513, Sec. 32, L. 1973
11040-		11552	46-3001
11044	Rep. Ch. 513, Sec. 32, L. 1973	11552.1	46-3005
11045	Rep. Ch. 314, Sec. 14, L. 1969	11552.2	46-3006
11046,		11552.3	46-3007
11047	Rep. Ch. 513, Sec. 32, L. 1973	11552.4	46-3008
11048.2	Rep. Ch. 513, Sec. 32, L. 1973	11553	46-1720
11123-11133	Rep. Ch. 513, Sec. 32, L. 1973	11555	46-3003
11134-11148	Rep. Ch. 513, Sec. 32, L. 1973	11556-11564	Rep. Ch. 513, Sec. 32, L. 1973
11148.1-11148.4	Rep. Ch. 430, Sec. 5, L. 1973	11566.3-	
11168	Rep. Ch. 508, Sec. 27, L. 1977	11566.5	Rep. Ch. 513, Sec. 32, L. 1973
11180	Rep. Ch. 196, Sec. 15, L. 1965	11567	Rep. Ch. 52, Sec. 1, L. 1959
11181-11183	Rep. Ch. 508, Sec. 27, L. 1977	11568,	
11184-11195	Rep. Ch. 513, Sec. 32, L. 1973	11569	Rep. Ch. 513, Sec. 32, L. 1973
11211-11218	Rep. Ch. 513, Sec. 32, L. 1973	11570	72-672
11219	41-1325	11571	Rep. Ch. 513, Sec. 32, L. 1973
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11598-11607	Rep. Ch. 513, Sec. 32, L. 1973	12177,	
11608	Rep. Ch. 196, Sec. 2, L. 1967	12178	Rep. Ch. 513, Sec. 32, L. 1973
11609	Rep. Ch. 513, Sec. 32, L. 1973	12179-12198	Rep. Ch. 196, Sec. 2, L. 1967
11610	Rep. Ch. 196, Sec. 2, L. 1967	12199-12212	Rep. Ch. 513, Sec. 32, L. 1973
11611	Rep. Ch. 513, Sec. 32, L. 1973	12213-12218	Rep. Ch. 196, Sec. 2, L. 1967
11612	Rep. Ch. 228, Sec. 6, L. 1969	12219	Rep. Ch. 513, Sec. 32, L. 1973
11613,		12220-12246	Rep. Ch. 196, Sec. 2, L. 1967
11614	Rep. Ch. 513, Sec. 32, L. 1973	12267-12274	Rep. Ch. 513, Sec. 32, L. 1973
11615-11631	Rep. Ch. 196, Sec. 2, L. 1967	12302-12414	Rep. Ch. 196, Sec. 2, L. 1967
11632-11667	Rep. Ch. 513, Sec. 32, L. 1973	12415-12417	Rep. Ch. 513, Sec. 32, L. 1973
11668	95-2801	12428	Rep. Ch. 513, Sec. 32, L. 1973
11669	95-2802	12429-12431	Rep. Ch. 196, Sec. 2, L. 1967
11670	95-2803	12432	95-1812
11671	95-2804	12433	Rep. Ch. 513, Sec. 32, L. 1973
11672	95-2805	12434-12438	Rep. Ch. 199, Sec. 101, L. 1965
11673	95-2806	12439	Rep. Ch. 266, Sec. 82, L. 1963
11674	95-2807	12440-12442	Rep. Ch. 199, Sec. 101, L. 1965
11675	95-2808	12443-12445	Rep. Ch. 266, Sec. 82, L. 1963
11676	95-2809	12446-12447	Rep. Ch. 199, Sec. 101, L. 1965
11677	95-2810	12447.1-12447.10	Rep. Ch. 15, Sec. 1, L. 1959
11678	95-2811	12447.11-12449	Rep. Ch. 199, Sec. 101, L. 1965
11679	95-2812	12450	Rep. Ch. 15, Sec. 1, L. 1959
11680	95-2813	12451-12453	Rep. Ch. 266, Sec. 82, L. 1963
11681	95-2814	12454	Rep. Ch. 199, Sec. 101, L. 1965
11682	95-2815	12456	Rep. Ch. 199, Sec. 101, L. 1965
11683	95-2816	12458-12459	Rep. Ch. 199, Sec. 101, L. 1965
11684	95-2817	12460	Rep. Ch. 266, Sec. 82, L. 1963
11685	Rep. Ch. 297, Sec. 6, L. 1973	12461-12462	Rep. Ch. 199, Sec. 101, L. 1965
11686	95-2819	12463	Rep. Ch. 147, Sec. 242 and Ch. 266, Sec. 82, L. 1963
11687-11702	Rep. Ch. 513, Sec. 32, L. 1973	12464	Rep. Ch. 199, Sec. 101, L. 1965
11703-11721	Rep. Ch. 196, Sec. 2, L. 1967	12465	Rep. Ch. 266, Sec. 82, L. 1963
11722-11727	Rep. Ch. 513, Sec. 32, L. 1973	12465.1-12465.8	Rep. Ch. 199, Sec. 101, L. 1965
11728-11846	Rep. Ch. 196, Sec. 2, L. 1967	12466, 12467	Rep. Ch. 193, Sec. 3, L. 1973
11847	Rep. Ch. 172, Sec. 3, L. 1961	12488, 12489	Rep. Ch. 266, Sec. 82, L. 1963
11848-11853	Rep. Ch. 196, Sec. 2, L. 1967	12491-12493	Rep. Ch. 266, Sec. 82, L. 1963
11854-11861	Rep. Ch. 513, Sec. 32, L. 1973	12494	Rep. Ch. 199, Sec. 101, L. 1965
11862	Rep. Ch. 196, Sec. 2, L. 1967	12495	Rep. Ch. 266, Sec. 82, L. 1963
11863-11865	Rep. Ch. 513, Sec. 32, L. 1973	12496	Rep. Ch. 199, Sec. 101, L. 1965
11866-11868	Rep. Ch. 196, Sec. 2, L. 1967	12497	Rep. Ch. 266, Sec. 82, L. 1963
11869	Rep. Ch. 513, Sec. 32, L. 1973	12499	Rep. Ch. 199, Sec. 101, L. 1965
11870-11911	Rep. Ch. 196, Sec. 2, L. 1967	12500-12502	Rep. Ch. 266, Sec. 82, L. 1963
11912-11914	Rep. Ch. 228, Sec. 6, L. 1969	12503-12512	Rep. Ch. 199, Sec. 101, L. 1965
11915-11970	Rep. Ch. 196, Sec. 2, L. 1967	12513-12515	Rep. Ch. 266, Sec. 82, L. 1963
11971	95-2901	12519	Rep. Ch. 266, Sec. 82, L. 1963
11972	95-2902	12520-12521	Rep. Ch. 199, Sec. 101, L. 1965
11973	Rep. Ch. 196, Sec. 2, L. 1967	12522	Rep. Ch. 266, Sec. 82, L. 1963
11974, 11975	95-1504	12524-12528	Rep. Ch. 266, Sec. 82, L. 1963
11976	Rep. Ch. 513, Sec. 32, L. 1973	12529	Rep. Ch. 199, Sec. 101, L. 1965
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11978	95-3002		
11979-11988	Rep. Ch. 513, Sec. 32, L. 1973		
11989-12001	Rep. Ch. 196, Sec. 2, L. 1967		
12002	Rep. Ch. 228, Sec. 6, L. 1969		
12003-12007	Rep. Ch. 196, Sec. 2, L. 1967		
12008	Rep. Ch. 513, Sec. 32, L. 1973		
12009-12014	Rep. Ch. 196, Sec. 2, L. 1967		
12015	Rep. Ch. 513, Sec. 32, L. 1973		
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12087-12174	Rep. Ch. 196, Sec. 2, L. 1967		

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12534	Rep. Ch. 266, Sec. 82, L. 1963		12547-12552	Rep. Ch. 199, Sec. 101, L. 1965	
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47	Rep. Ch. 14, Sec. 1, L. 1975	265-267	Rep. Ch. 271, Sec. 33, L. 1963
53, 54	Rep. Ch. 194, Sec. 13, L. 1967	297	Rep. Ch. 129, Sec. 1, L. 1963
56	Rep. Ch. 18, Sec. 4, L. 1969	305	Rep. Ch. 177, Sec. 51, L. 1965
61-64	Rep. Ch. 1, Sec. 4, L. 1965	308-311	Rep. Ch. 305, Sec. 2, L. 1967
68, 69	Rep. Ch. 1, Sec. 4, L. 1965	321	Rep. Ch. 264, Sec. 10-102, L. 1963
71-74	Rep. Ch. 1, Sec. 4, L. 1965	363	Rep. Ch. 7, Sec. 6, L. 1973
76	Rep. Ch. 1, Sec. 4, L. 1965	378-379	Rep. Ch. 177, Sec. 51, L. 1965
78	Rep. Ch. 103, Sec. 10, L. 1977	380	Rep. Ch. 68, Sec. 10, L. 1967
79	Rep. Ch. 1, Sec. 4, L. 1965	417	Rep. Ch. 68, Sec. 10, L. 1967
81	Rep. Ch. 1, Sec. 4, L. 1965	422	Rep. Ch. 198, Sec. 5, L. 1977; Ch. 309, Sec. 31, L. 1977
105	Rep. Ch. 30, Sec. 2, L. 1973	424	Rep. Ch. 388, Sec. 2, L. 1973
106-114	Rep. Ch. 342, Sec. 29, L. 1977	443-445	Rep. Ch. 80, Sec. 14, L. 1961
120	Rep. Ch. 309, Sec. 31, L. 1977	446	Rep. Ch. 61, Sec. 11, L. 1977
135	Rep. Ch. 326, Sec. 103, L. 1974	450-457	Rep. Ch. 368, Sec. 248, L. 1969
136	Rep. Ch. 120, Sec. 96, L. 1974; Ch. 158, Sec. 1, L. 1974	459-462	Rep. Ch. 368, Sec. 248, L. 1969
137	Rep. Ch. 428, Sec. 116, L. 1973	464-466	Rep. Ch. 368, Sec. 248, L. 1969
150, 151	Rep. Ch. 297, Sec. 6, L. 1973	469	Rep. Ch. 368, Sec. 248, L. 1969
155	43-711.2	497-498	Rep. Ch. 368, Sec. 248, L. 1969
156	Rep. Ch. 59, Sec. 2, L. 1973; Ch. 96, Sec. 8, L. 1973	500-517	Rep. Ch. 368, Sec. 248, L. 1969
158	Rep. Ch. 80, Sec. 14, L. 1961	519-530	Rep. Ch. 368, Sec. 248, L. 1969
163	43-711.3	532-570	Rep. Ch. 368, Sec. 248, L. 1969
164	43-711.5	572-580	Rep. Ch. 368, Sec. 248, L. 1969
169	Rep. Ch. 177, Sec. 51, L. 1965	582-594	Rep. Ch. 368, Sec. 248, L. 1969
172	Rep. Ch. 147, Sec. 242, L. 1963	595-597	Rep. Ch. 194, Sec. 13, L. 1967
177	Rep. Ch. 94, Sec. 5, L. 1969	598-641	Rep. Ch. 368, Sec. 248, L. 1969
180	Rep. Ch. 147, Sec. 242, L. 1963	642-646	Rep. Ch. 5, Sec. 496, L. 1971
184	Rep. Ch. 152, Sec. 3, L. 1971	648	Rep. Ch. 2, Sec. 63 and Ch. 5, Sec. 496, L. 1971
185	Rep. Ch. 61, Sec. 11, L. 1977	666	Rep. Ch. 2, Sec. 63, L. 1971
189	Rep. Ch. 177, Sec. 51, L. 1965	668	Rep. Ch. 2, Sec. 63, L. 1971
190	Rep. Ch. 152, Sec. 3, L. 1971	673-680	Rep. Ch. 2, Sec. 63, L. 1971
191, 192	Rep. Ch. 61, Sec. 11, L. 1977	689	Rep. Ch. 2, Sec. 63, L. 1971
195	Rep. Ch. 177, Sec. 51, L. 1965	698	Rep. Ch. 2, Sec. 63, L. 1971
196	Rep. Ch. 129, Sec. 1, L. 1963	705	Rep. Ch. 2, Sec. 63, L. 1971
208-213	Rep. Ch. 431, Sec. 176, L. 1975	732	Rep. Ch. 2, Sec. 63, L. 1971
214	Rep. Ch. 129, Sec. 1, L. 1963	738-741	Rep. Ch. 2, Sec. 63, L. 1971
217	Rep. Ch. 177, Sec. 51, L. 1965	756	Rep. Ch. 2, Sec. 63, L. 1971
229	Rep. Ch. 326, Sec. 103, L. 1974	763-765	Rep. Ch. 2, Sec. 63, L. 1971
232-235	Rep. Ch. 97, Sec. 32, L. 1961	766-769	Rep. Ch. 75, Sec. 5, L. 1967
243	Rep. Ch. 97, Sec. 32, L. 1961	772, 773	Rep. Ch. 2, Sec. 63, L. 1971
245-247	Rep. Ch. 80, Sec. 14, L. 1961	775	Rep. Ch. 2, Sec. 63, L. 1971
248	Rep. Ch. 271, Sec. 33, L. 1963	790	Rep. Ch. 298, Sec. 9, L. 1973
249-253	Rep. Ch. 80, Sec. 14, L. 1961	805	Rep. Ch. 5, Sec. 496, L. 1971
256	Rep. Ch. 97, Sec. 9, L. 1977	807, 808	Rep. Ch. 5, Sec. 496, L. 1971
257-260	Rep. Ch. 80, Sec. 14, L. 1961	810	Rep. Ch. 5, Sec. 496, L. 1971
261	Rep. Ch. 43, Sec. 3, L. 1973		



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819	Rep. Ch. 5, Sec. 496, L. 1971	1290, 1291	Rep. Ch. 199, Sec. 101, L. 1965
823-829	Rep. Ch. 5, Sec. 496, L. 1971	1292	Rep. Ch. 266, Sec. 82, L. 1963
833, 834	Rep. Ch. 5, Sec. 496, L. 1971	1293	Rep. Ch. 199, Sec. 201, L. 1965
838-840	Rep. Ch. 5, Sec. 496, L. 1971	1294	Rep. Ch. 266, Sec. 82, L. 1963
844	Rep. Ch. 5, Sec. 496, L. 1971	1298	Rep. Ch. 199, Sec. 101, L. 1965
848-850	Rep. Ch. 5, Sec. 496, L. 1971	1299-1301	Rep. Ch. 266, Sec. 82, L. 1963
855	Rep. Ch. 5, Sec. 496, L. 1971	1302	Rep. Ch. 199, Sec. 101, L. 1965
857-860	Rep. Ch. 5, Sec. 496, L. 1971	1305	Rep. Ch. 266, Sec. 82, L. 1963
862	Rep. Ch. 5, Sec. 496, L. 1971	1306	Rep. Ch. 190, Sec. 1, L. 1959
866	Rep. Ch. 5, Sec. 496, L. 1971	1308-1310	Rep. Ch. 190, Sec. 1, L. 1959
871, 872	Rep. Ch. 5, Sec. 496, L. 1971	1343	Rep. Ch. 316, Sec. 209, L. 1974
881-883	Rep. Ch. 5, Sec. 496, L. 1971	1408	Rep. Ch. 316, Sec. 209, L. 1974
885	Rep. Ch. 5, Sec. 496, L. 1971	1427, 1428	Rep. Ch. 316, Sec. 209, L. 1974
899	Rep. Ch. 5, Sec. 496, L. 1971	1435	Rep. Ch. 316, Sec. 209, L. 1974
902-907	Rep. Ch. 5, Sec. 496, L. 1971	1474, 1475	Rep. Ch. 197, Sec. 223, L. 1967
909	Rep. Ch. 5, Sec. 496, L. 1971	1477	Rep. Ch. 197, Sec. 223, L. 1967
911-916	Rep. Ch. 5, Sec. 496, L. 1971	1481-1511	Rep. Ch. 197, Sec. 223, L. 1967
941	Rep. Ch. 5, Sec. 496, L. 1971	1559-1572	Rep. Ch. 197, Sec. 223, L. 1967
943-945	Rep. Ch. 5, Sec. 496, L. 1971	1585-1593	Rep. Ch. 338, Sec. 43, L. 1969
946	Rep. Ch. 26, Sec. 1, L. 1961	1594	82A-1602.20
948-951	Rep. Ch. 26, Sec. 1, L. 1961	1612	Rep. Ch. 350, Sec. 363, L. 1974
965, 966	Rep. Ch. 5, Sec. 496, L. 1971	1615	Rep. Ch. 350, Sec. 363, L. 1974
968	Rep. Ch. 262, Sec. 16, L. 1969	1625	82A-1602.21
969-971	Rep. Ch. 5, Sec. 496, L. 1971	1636	Rep. Ch. 101, Sec. 36, L. 1977
972	Rep. Ch. 262, Sec. 16, L. 1969	1659	Rep. Ch. 225, Sec. 24, L. 1971
973	Rep. Ch. 5, Sec. 496, L. 1971	1714-1717	Rep. Ch. 310, Sec. 6, L. 1971
993, 994	Rep. Ch. 5, Sec. 496, L. 1971	1719	Rep. Ch. 310, Sec. 6, L. 1971
997	Rep. Ch. 5, Sec. 496, L. 1971	1721-1726	Rep. Ch. 310, Sec. 6, L. 1971
999-1003	Rep. Ch. 5, Sec. 496, L. 1971	1752-1754	Rep. Ch. 100, Sec. 25, L. 1977
1007	Rep. Ch. 5, Sec. 496, L. 1971	1797	Rep. Ch. 177, Sec. 51, L. 1965
1011	Rep. Ch. 5, Sec. 496, L. 1971	1818, 1819	Rep. Ch. 12, Sec. 59, L. 1977
1013	Rep. Ch. 5, Sec. 496, L. 1971	1882	Rep. Ch. 310, Sec. 201, L. 1974
1019-1029	Rep. Ch. 5, Sec. 496, L. 1971	1928	Rep. Ch. 218, Sec. 173, L. 1974
1033-1035	Rep. Ch. 5, Sec. 496, L. 1971	2009-2024	Rep. Ch. 99, Sec. 43, L. 1969
1038, 1039	Rep. Ch. 5, Sec. 496, L. 1971	2026	Rep. Ch. 99, Sec. 43, L. 1969
1041, 1042	Rep. Ch. 5, Sec. 496, L. 1971	2029	Rep. Ch. 309, Sec. 31, L. 1977
1043, 1044	Rep. Ch. 5, Sec. 496, L. 1971	2050	Rep. Ch. 37, Sec. 53, L. 1977
1113	Rep. Ch. 266, Sec. 82, L. 1963	2059	Rep. Ch. 225, Sec. 3, L. 1974
1121, 1122	Rep. Ch. 466, Sec. 38, L. 1975	2061, 2062	Rep. Ch. 225, Sec. 3, L. 1974
1124	Rep. Ch. 466, Sec. 38, L. 1975	2063	Rep. Ch. 37, Sec. 53, L. 1977
1126-1130	Rep. Ch. 466, Sec. 38, L. 1975	2095	Rep. Ch. 5, Sec. 496, L. 1971
1131	Rep. Ch. 120, Sec. 96, L. 1974	2119	74-708
1132	Rep. Ch. 198, Sec. 2 and Ch. 213, Sec. 9, L. 1963	2120	74-710
1133	Rep. Ch. 120, Sec. 96, L. 1974	2126	74-711
1134-1142	Rep. Ch. 466, Sec. 38, L. 1975	2127	74-712
1143	Rep. Ch. 37, Sec. 53, L. 1977	2128	74-713
1144	Rep. Ch. 466, Sec. 38, L. 1975	2129-2131	Rep. Ch. 263, Sec. 17, L. 1977
1146	Rep. Ch. 466, Sec. 38, L. 1975	2132	74-705
1147	Rep. Ch. 213, Sec. 9, L. 1963	2133	Rep. Ch. 263, Sec. 17, L. 1977
1249-1250	Rep. Ch. 199, Sec. 101, L. 1965	2221	Rep. Ch. 464, Sec. 1, L. 1977
1259	Rep. Ch. 199, Sec. 101, L. 1965	2238-2242	Rep. Ch. 280, Sec. 22, L. 1965
1260, 1261	Rep. Ch. 266, Sec. 82, L. 1963	2243	Rep. Ch. 280, Sec. 1, L. 1965
1265	Rep. Ch. 266, Sec. 82, L. 1963	2244	Rep. Ch. 280, Sec. 22, L. 1965
1267	Rep. Ch. 266, Sec. 82, L. 1963	2245	Rep. Ch. 280, Sec. 1, L. 1965
1270	Rep. Ch. 266, Sec. 82, L. 1963	2246	Rep. Ch. 129, Sec. 1 and Ch. 147, Sec. 242, L. 1963
1273	Rep. Ch. 266, Sec. 82, L. 1963	2247	Rep. Ch. 280, Sec. 1, L. 1965
1277-1280	Rep. Ch. 199, Sec. 101, L. 1965	2248	Rep. Ch. 280, Sec. 22, L. 1965
1281	Rep. Ch. 266, Sec. 82, L. 1963	2249	Rep. Ch. 129, Sec. 1, L. 1963
1282-1283	Rep. Ch. 199, Sec. 101, L. 1965	2250	Rep. Ch. 280, Sec. 22, L. 1965
1284-1287	Rep. Ch. 266, Sec. 82, L. 1963	2251	Rep. Ch. 147, Sec. 242, L. 1963
		2252	Rep. Ch. 280, Sec. 22, L. 1965

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2277	Rep. Ch. 147, Sec. 242, L. 1963	3640-3656	Rep. Ch. 536, Sec. 45, L. 1975
2278	Rep. Ch. 280, Sec. 22, L. 1965	3658-3689	Rep. Ch. 536, Sec. 45, L. 1975
2279	Rep. Ch. 147, Sec. 242, L. 1963	3691	Rep. Ch. 164, Sec. 5, L. 1975; Ch. 293, Sec. 23, L. 1975
2280-2281	Rep. Ch. 280, Sec. 22, L. 1965	3699	Rep. Ch. 33, Sec. 25, L. 1977
2542	Rep. Ch. 155, Sec. 11, L. 1977	3708-3723	Rep. Ch. 365, Sec. 2, L. 1974
2544, 2545	Rep. Ch. 405, Sec. 120, L. 1973	3726	Rep. Ch. 293, Sec. 23, L. 1975
2553-2555	Rep. Ch. 405, Sec. 120, L. 1973	3735	Rep. Ch. 365, Sec. 2, L. 1974
2558	Rep. Ch. 98, Sec. 22, L. 1977	3737	Rep. Ch. 33, Sec. 25, L. 1977
2561	Rep. Ch. 98, Sec. 22, L. 1977	3740	Rep. Ch. 512, Sec. 31, L. 1975
2573	Rep. Ch. 155, Sec. 11, L. 1977	3745	Rep. Ch. 512, Sec. 31, L. 1975
2581	Rep. Ch. 155, Sec. 11, L. 1977	3761-3771	Rep. Ch. 199, Sec. 1, L. 1961
2614	Rep. Ch. 126, Sec. 15, L. 1977	3773-3780	Rep. Ch. 365, Sec. 2, L. 1974
2620	Rep. Ch. 263, Sec. 15, L. 1975	3782-3786	Rep. Ch. 365, Sec. 2, L. 1974
2725-2727	Rep. Ch. 249, Sec. 23, L. 1967	3787, 3788	Rep. Ch. 263, Sec. 15, L. 1975
2731	Rep. Ch. 126, Sec. 15, L. 1977	3790-3793	Rep. Ch. 365, Sec. 2, L. 1974
2736	Rep. Ch. 405, Sec. 120, L. 1973	3794	Rep. Ch. 263, Sec. 15, L. 1975
2877	S. M.R.Civ.P., Rule 4 D	3795-3804	Rep. Ch. 184, Sec. 1, L. 1975
2882	Rep. Ch. 298, Sec. 5, L. 1974	3805-3811	Rep. Ch. 300, Sec. 143, L. 1967
2884	Rep. Ch. 68, Sec. 10, L. 1967	3816-3825	Rep. Ch. 300, Sec. 143, L. 1967
2892	Rep. Ch. 27, Sec. 2, L. 1975	3829-3854	Rep. Ch. 300, Sec. 143, L. 1967
2921	Rep. Ch. 5, Sec. 2, 2nd Ex. L. 1971	3855	Rep. Ch. 264, Sec. 10-102, L. 1963
2957	Rep. Ch. 123, Sec. 23, L. 1973	3856	Rep. Ch. 300, Sec. 143, L. 1967
2961	Rep. Ch. 100, Sec. 58, L. 1973; Sec. 23, Ch. 123, L. 1973	3857	Rep. Ch. 264, Sec. 10-102, L. 1963
3000	Rep. Ch. 184, Sec. 64, L. 1977	3858-3887	Rep. Ch. 300, Sec. 143, L. 1967
3063, 3064	Rep. Ch. 197, Sec. 12-109, L. 1965	3889-3893	Rep. Ch. 300, Sec. 143, L. 1967
3067	Rep. Ch. 530, Sec. 27, L. 1977	3895-3900	Rep. Ch. 300, Sec. 143, L. 1967
3068	Rep. Ch. 184, Sec. 64, L. 1977	3902-3906	Rep. Ch. 300, Sec. 143, L. 1967
3069	Rep. Ch. 530, Sec. 27, L. 1977	3908	Rep. Ch. 300, Sec. 143, L. 1967
3097	Rep. Ch. 68, Sec. 10, L. 1967	4069	Rep. Ch. 43, Sec. 4, L. 1959
3125-3127	Rep. Ch. 513, Sec. 32, L. 1973	4221-4236	Rep. Ch. 198, Sec. 98, L. 1967
3138	Rep. Ch. 420, Sec. 4, L. 1971	4303	Rep. Ch. 264, Sec. 10-102, L. 1963
3170	Rep. Ch. 548, Sec. 3, L. 1977	4305-4307	Rep. Ch. 264, Sec. 10-102, L. 1963
3175-3176	Rep. Ch. 491, Sec. 27, L. 1973; Ch. 114, Sec. 2, L. 1975	4349-4352	Rep. Ch. 315, Sec. 24, L. 1974
3177	Rep. Ch. 253, Sec. 10, L. 1975	4363	Rep. Ch. 339, Sec. 3, L. 1974
3190	Rep. Ch. 196, Sec. 2, L. 1967	4364	Rep. Ch. 315, Sec. 24, L. 1974
3195, 3196	Rep. Ch. 5, Sec. 496, L. 1971	4366	Rep. Ch. 315, Sec. 24, L. 1974
3219	Rep. Ch. 260, Sec. 12, L. 1967	4368	Rep. Ch. 129, Sec. 1 and Ch. 212, Sec. 3, L. 1963
3231	Rep. Ch. 40, Sec. 2, L. 1973	4370	Rep. Ch. 315, Sec. 24, L. 1974
3237, 3238	Rep. Ch. 67, Sec. 11, L. 1967	4373	72-101.1
3289	Rep. Ch. 233, Sec. 9, L. 1977	4396	Rep. Ch. 93, Sec. 44, L. 1969
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3465-3478	Rep. Ch. 500, Sec. 20, L. 1973	4479	Rep. Ch. 213, Sec. 3, L. 1959
3597	Rep. Ch. 466, Sec. 38, L. 1975	4492	Rep. Ch. 213, Sec. 3, L. 1959
3607	Rep. Ch. 536, Sec. 45, L. 1975	4494-4497	Rep. Ch. 213, Sec. 3, L. 1959
3608	Rep. Ch. 232, Sec. 12, L. 1963	4515	62-617
3609-3612	Rep. Ch. 536, Sec. 45, L. 1975	4631-4633	Rep. Ch. 264, Sec. 10-102, L. 1963
3613	Rep. Ch. 33, Sec. 25, L. 1977	4670, 4671	Rep. Ch. 12, Sec. 2, L. 1974
3614	Rep. Ch. 232, Sec. 12, L. 1963	4696	Rep. Ch. 1, Sec. 6, L. 1975
3616, 3617	Rep. Ch. 536, Sec. 45, L. 1975	4722	Rep. Ch. 263, Sec. 15, L. 1975
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3622	Rep. Ch. 232, Sec. 12, L. 1963	4726, 4727	Rep. Ch. 365, Sec. 2, L. 1974
3623	Rep. Ch. 536, Sec. 45, L. 1975	4728	Rep. Ch. 263, Sec. 15, L. 1975
3624	Rep. Ch. 33, Sec. 25, L. 1977	4732-4735	Rep. Ch. 365, Sec. 2, L. 1974
3626	Rep. Ch. 536, Sec. 45, L. 1975	4736-4740	Rep. Ch. 263, Sec. 15, L. 1975
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4750, 4751	Rep. Ch. 263, Sec. 15, L. 1975	5788-5799	Rep. Ch. 264, Sec. 10-102, L. 1963
4753	Rep. Ch. 263, Sec. 15, L. 1975		
4754-4758	Rep. Ch. 365, Sec. 2, L. 1974	5803	Rep. Ch. 264, Sec. 10-102, L. 1963
4760	Rep. Ch. 365, Sec. 2, L. 1974	5813-5815	Rep. Ch. 32, Sec. 1, L. 1953
4763	Rep. Ch. 365, Sec. 2, L. 1974	5816-5818	Rep. Ch. 464, Sec. 1, L. 1977
4764	Rep. Ch. 263, Sec. 15, L. 1975	5837-5934	Rep. Ch. 264, Sec. 10-102, L. 1963
4772	Rep. Ch. 365, Sec. 2, L. 1974		
4776-4779	Rep. Ch. 365, Sec. 2, L. 1974	5936-6037a	Rep. Ch. 264, Sec. 10-102, L. 1963
4780	Rep. Ch. 516, Sec. 10, L. 1975	6056-6062	Rep. Ch. 264, Sec. 10-102, L. 1963
4787	Rep. Ch. 263, Sec. 15, L. 1975		
4789	Rep. Ch. 365, Sec. 2, L. 1974	6067	Rep. Ch. 200, Sec. 7, L. 1963
4797, 4798	Rep. Ch. 365, Sec. 2, L. 1974	6081, 6082	Rep. Ch. 264, Sec. 10-102, L. 1963
4799	Rep. Ch. 263, Sec. 15, L. 1975		
4800, 4801	Rep. Ch. 365, Sec. 2, L. 1974	6127	Rep. Ch. 185, Sec. 17, L. 1977
4802, 4803	Rep. Ch. 263, Sec. 15, L. 1975	6131-6135	Rep. Ch. 264, Sec. 10-102, L. 1963
4804, 4805	Rep. Ch. 365, Sec. 2, L. 1974		
4807	Rep. Ch. 263, Sec. 15, L. 1975	6246	Rep. Ch. 470, Sec. 14, L. 1973
4808-4811	Rep. Ch. 365, Sec. 2, L. 1974	6269	Rep. Ch. 470, Sec. 14, L. 1973
4812, 4813	Rep. Ch. 263, Sec. 15, L. 1975	6285	Rep. Ch. 68, Sec. 10, L. 1967
4814	Rep. Ch. 365, Sec. 2, L. 1974	6308	Rep. Ch. 15, Sec. 2, L. 1973
4816	Rep. Ch. 365, Sec. 2, L. 1974	6310	Rep. Ch. 344, Sec. 60, L. 1977
4817, 4818	Rep. Ch. 263, Sec. 15, L. 1975		
4819-4822	Rep. Ch. 365, Sec. 2, L. 1974	6351-6353	Rep. Ch. 110, Sec. 4, L. 1969
4828-4835	Rep. Ch. 365, Sec. 2, L. 1974	6357, 6358	Rep. Ch. 110, Sec. 4, L. 1969
4839	Rep. Ch. 263, Sec. 15, L. 1975	6411-6419	Rep. Ch. 101, Sec. 36, L. 1977
4840-4843	Rep. Ch. 452, Sec. 46, L. 1973	6427	Rep. Ch. 13, Sec. 84, L. 1961
4845-4853	Rep. Ch. 452, Sec. 46, L. 1973	6475	Rep. Ch. 7, Sec. 1, L. 1963
4858, 4859	Rep. Ch. 197, Sec. 12-109, L. 1965	6477	Rep. Ch. 13, Sec. 84, L. 1961
		6481	Rep. Ch. 13, Sec. 84, L. 1961
4864, 4865	Rep. Ch. 253, Sec. 108, L. 1974	6487, 6488	Rep. Ch. 13, Sec. 84, L. 1961
4867-4870	Rep. Ch. 452, Sec. 46, L. 1973	6490-6492	Rep. Ch. 13, Sec. 84, L. 1961
4879	Rep. Ch. 452, Sec. 46, L. 1973	6495-6496	Rep. Ch. 13, Sec. 84, L. 1961
4891	Rep. Ch. 452, Sec. 46, L. 1973	6498	Rep. Ch. 13, Sec. 84, L. 1961
5089, 5090	Rep. Ch. 264, Sec. 10-102, L. 1963	6505	Rep. Ch. 13, Sec. 84, L. 1961
5092-5094a	Rep. Ch. 264, Sec. 10-102, L. 1963	6507	S. Sup. Ct. R., 34 St. Rptr. 26
		6513	Rep. Ch. 6, Sec. 1, L. 1963
5115	Rep. Ch. 264, Sec. 10-102, L. 1963	6514	S. M.R.Civ.P., Rule 41(e)
5119-5121	Rep. Ch. 264, Sec. 10-102, L. 1963	6515	Rep. Ch. 13, Sec. 84, L. 1961
		6516	Rep. Ch. 5, Sec. 1 and Ch. 189, Sec. 2, L. 1963
5122	74-701		
5123, 5124	Rep. Ch. 263, Sec. 17, L. 1977; Ch. 265, Sec. 20, L. 1977	6518-6522	Rep. Ch. 13, Sec. 84, L. 1961
5125	74-703	6524, 6525	Rep. Ch. 13, Sec. 84, L. 1961
5126, 5127	Rep. Ch. 263, Sec. 17, L. 1977; Ch. 265, Sec. 20, L. 1977	6526	Rep. Ch. 189, Sec. 2, L. 1963
5128	74-704	6528-6541	Rep. Ch. 13, Sec. 84, L. 1961
5130	Rep. Ch. 264, Sec. 10-102, L. 1963	6543, 6544	Rep. Ch. 13, Sec. 84, L. 1961
5177	Rep. Ch. 135, Sec. 2, L. 1967	6547	Rep. Ch. 13, Sec. 84, L. 1961
5226	Rep. Ch. 313, Sec. 45, L. 1977	6549-6551	Rep. Ch. 13, Sec. 84, L. 1961
5229	Rep. Ch. 313, Sec. 45, L. 1977	6554-6564	Rep. Ch. 13, Sec. 84, L. 1961
5314-5320	Rep. Ch. 264, Sec. 10-102, L. 1963	6566-6568	Rep. Ch. 13, Sec. 84, L. 1961
		6571-6573	Rep. Ch. 13, Sec. 84, L. 1961
5353	Rep. Ch. 168, Sec. 3, L. 1975	6576-6578	Rep. Ch. 13, Sec. 84, L. 1961
5357-5359	Rep. Ch. 264, Sec. 10-102, L. 1963	6580-6589	Rep. Ch. 13, Sec. 84, L. 1961
		6591	Rep. Ch. 13, Sec. 84, L. 1961
5411	Rep. Ch. 297, Sec. 11, L. 1974	6593	Rep. Ch. 13, Sec. 84, L. 1961
5461	74-706	6641	Rep. Ch. 13, Sec. 84, L. 1961
5462	74-707		
5695-5703	Rep. Ch. 264, Sec. 10-102, L. 1963	6657	Rep. Ch. 299, Sec. 7, L. 1977
5709	Rep. Ch. 264, Sec. 10-102, L. 1963	6690	Rep. Ch. 264, Sec. 10-102, L. 1963
		6710	Rep. Ch. 13, Sec. 84, L. 1961
		6712-6714	Rep. Ch. 13, Sec. 84, L. 1961
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6738	S. M.R.App.Civ.P.	7421-7423	Rep. Ch. 365, Sec. 2, L. 1974
6742-6744	Rep. Ch. 13, Sec. 84, L. 1961	7424	Rep. Ch. 263, Sec. 15, L. 1975
6756-6758	Rep. Ch. 13, Sec. 84, L. 1961	7425-7433	Rep. Ch. 365, Sec. 2, L. 1974
6762	Rep. Ch. 13, Sec. 84, L. 1961	7435-7483	Rep. Ch. 365, Sec. 2, L. 1974
6763	S. M.R.Civ.P., Rule 52(a)	7485-7496	Rep. Ch. 365, Sec. 2, L. 1974
6764	Rep. Ch. 13, Sec. 84, L. 1961	7497	Rep. Ch. 263, Sec. 15, L. 1975
6766-6768	S. M.R.Civ.P., Rule 52(b)	7499-7503	Rep. Ch. 365, Sec. 2, L. 1974
6771-6773	Rep. Ch. 13, Sec. 84, L. 1961	7508-7526	Rep. Ch. 365, Sec. 2, L. 1974
6775-6777	Rep. Ch. 13, Sec. 84, L. 1961	7528-7532	Rep. Ch. 365, Sec. 2, L. 1974
6780-6782	Rep. Ch. 13, Sec. 84, L. 1961	7534	Rep. Ch. 263, Sec. 15, L. 1975
6784	Rep. Ch. 13, Sec. 84, L. 1961	7535-7540	Rep. Ch. 365, Sec. 2, L. 1974
6785	S. M.R.App.Civ.P.	7542	Rep. Ch. 263, Sec. 15, L. 1975
6787-6792	S. M.R.App.Civ.P., Rules 9, 10, 25	7543, 7544	Rep. Ch. 365, Sec. 2, L. 1974
6796	Rep. Ch. 13, Sec. 84, L. 1961	7546-7557	Rep. Ch. 365, Sec. 2, L. 1974
6797	S. M.R.Civ.P., Rule 59(d)	7561-7606	Rep. Ch. 365, Sec. 2, L. 1974
6798	S. M.R.App.Civ.P., Rule 7	7608	Rep. Ch. 263, Sec. 15, L. 1975
6799	S. M.R.App.Civ.P., Rules 9, 10, 25	7610	Rep. Ch. 263, Sec. 15, L. 1975
6800	Rep. Ch. 13, Sec. 84, L. 1961	7611-7626	Rep. Ch. 365, Sec. 2, L. 1974
6801	S. M.R.App.Civ.P., Rule 29	7627	Rep. Ch. 263, Sec. 15, L. 1975
6802	Rep. Ch. 13, Sec. 84, L. 1961	7631	Rep. Ch. 365, Sec. 2, L. 1974
6806	S. M.R.App.Civ.P., Rules 9, 10, 25	7633	Rep. Ch. 365, Sec. 2, L. 1974
6934-6936	Rep. Ch. 263, Sec. 15, L. 1975	7634-7639	Rep. Ch. 263, Sec. 15, L. 1975
7006	Rep. Ch. 420, Sec. 21, L. 1975	7640	Rep. Ch. 272, Sec. 1, L. 1969; Ch. 263, Sec. 15, L. 1975
7008	Rep. Ch. 420, Sec. 21, L. 1975	7641-7652	Rep. Ch. 263, Sec. 15, L. 1975
7011, 7012	Rep. Ch. 420, Sec. 21, L. 1975	7653-7660	Rep. Ch. 365, Sec. 2, L. 1974
7077	Rep. Ch. 344, Sec. 60, L. 1977	7661-7663	Rep. Ch. 263, Sec. 15, L. 1975
7098	S. M.R.App.Civ.P., Rule 1	7664-7697	Rep. Ch. 365, Sec. 2, L. 1974
7099	S. M.R.App.Civ.P., Rule 5	7711	Rep. Ch. 365, Sec. 2, L. 1974
7100	S. M.R.App.Civ.P., Rules 4, 6	7714-7716	Rep. Ch. 365, Sec. 2, L. 1974
7101	S. M.R.App.Civ.P., Rule 6	7721-7723	Rep. Ch. 365, Sec. 2, L. 1974
7102-7105	Rep. Ch. 13, Sec. 84, L. 1961	7753-7756	Rep. Ch. 365, Sec. 2, L. 1974
7106	S. M.R.App.Civ.P., Rule 7	7757	Rep. Ch. 263, Sec. 15, L. 1975
7107	S. M.R.App.Civ.P., Rules 6, 7	7758-7760	Rep. Ch. 365, Sec. 2, L. 1974
7109	S. M.R.App.Civ.P., Rule 7	7761	Rep. Ch. 263, Sec. 15, L. 1975
7110	S. M.R.App.Civ.P., Rule 6	7762-7772	Rep. Ch. 365, Sec. 2, L. 1974
7111	S. M.R.App.Civ.P., Rule 13	7773	Rep. Ch. 263, Sec. 15, L. 1975
7113	S. M.R.App.Civ.P., Rule 1	7774, 7775	Rep. Ch. 365, Sec. 2, L. 1974
7115	S. M.R.App.Civ.P., Rules 9, 10, 25	7777-7786	Rep. Ch. 365, Sec. 2, L. 1974
7116	S. M.R.App.Civ.P., Rules 3, 4, 6, 9-11, 25	7787-7795	Rep. Ch. 263, Sec. 15, L. 1975
7117	S. M.R.App.Civ.P., Rule 12	7796-7806	Rep. Ch. 365, Sec. 2, L. 1974
7118	S. M.R.App.Civ.P., Rule 14	7807	Rep. Ch. 263, Sec. 15, L. 1975
7119	S. M.R.App.Civ.P., Rule 15	7808, 7809	Rep. Ch. 365, Sec. 2, L. 1974
7120	S. M.R.App.Civ.P., Rule 16	7810	Rep. Ch. 263, Sec. 15, L. 1975
7137-7139	Rep. Ch. 13, Sec. 84, L. 1961	7815	Rep. Ch. 365, Sec. 2, L. 1974
7141	Rep. Ch. 13, Sec. 84, L. 1961	7816	Rep. Ch. 263, Sec. 15, L. 1975
7145-7148	Rep. Ch. 13, Sec. 84, L. 1961	7817-7828	Rep. Ch. 365, Sec. 2, L. 1974
7151	Rep. Ch. 13, Sec. 84, L. 1961	7829-7843	Rep. Ch. 328, Sec. 13, L. 1974
7159	Rep. Ch. 13, Sec. 84, L. 1961	7966	Rep. Ch. 263, Sec. 15, L. 1975
7187	Rep. Ch. 13, Sec. 84, L. 1961	7976	Rep. Ch. 13, Sec. 84, L. 1961
7323-7329	Rep. Ch. 300, Sec. 143, L. 1967	7978	Rep. Ch. 154, Sec. 1, L. 1959
7350	Rep. Ch. 453, Sec. 2, L. 1973	7999-8014	Rep. Ch. 13, Sec. 84, L. 1961
7383-7395	Rep. Ch. 365, Sec. 2, L. 1974	8041	Rep. Ch. 33, Sec. 25, L. 1977
7396	Rep. Ch. 263, Sec. 15, L. 1975	8042-8048	Rep. Ch. 13, Sec. 84, L. 1961
7397	Rep. Ch. 365, Sec. 2, L. 1974	8096-8098	Rep. Ch. 513, Sec. 32, L. 1973
7400	Rep. Ch. 365, Sec. 2, L. 1974	8100-8114	Rep. Ch. 513, Sec. 32, L. 1973
7404-7411	Rep. Ch. 365, Sec. 2, L. 1974	8116-8123	Rep. Ch. 513, Sec. 32, L. 1973
7413	Rep. Ch. 365, Sec. 2, L. 1974	8124-8144	Rep. Ch. 334, Sec. 49, L. 1977
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8190-8215	Rep. Ch. 513, Sec. 32, L. 1973	8865	46-3003
8216	16-3607	8867-8870	Rep. Ch. 513, Sec. 32, L. 1973
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45	1-10	Rep. Ch. 260, Sec. 12, L. 1967		16(b)	Rep. Ch. 202, Sec. 2, L. 1973
55	1	Rep. Ch. 196, Sec. 15, L. 1965		16(c)	Rep. Ch. 155, Sec. 2, L. 1973
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	5	Rep. Ch. 508, Sec. 27, L. 1977		16(f)	Rep. Ch. 252, Sec. 2, L. 1973
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69	1	51-516		17	Rep. Ch. 25, Sec. 5, L. 1975
	2	Rep. Ch. 518, Sec. 29, L. 1977		17(j)	Rep. Ch. 106, Sec. 1, L. 1973
77	1	Rep. Ch. 129, Sec. 1, L. 1963		18	Rep. Ch. 537, Sec. 7, L. 1975
84	1	Rep. Ch. 431, Sec. 176, L. 1975		20-22	Rep. Ch. 537, Sec. 7, L. 1975
88	1-2	Rep. Ch. 300, Sec. 143, L. 1967		23	Rep. Ch. 147, Sec. 242, L. 1963
92	1	Rep. Ch. 513, Sec. 32, L. 1973		24, 25	Rep. Ch. 23, Sec. 88, L. 1975
94	1	Rep. Ch. 264, Sec. 10-102, L. 1963		35	Rep. Ch. 324, Sec. 2, L. 1977
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	20	Rep. Ch. 316, Sec. 209, L. 1974	51	1-3	Rep. Ch. 310, Sec. 201, L. 1974
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5	1	Rep. Ch. 513, Sec. 32, L. 1973	69	1	Rep. Ch. 5, Sec. 496, L. 1971
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95	1-11	Rep. Ch. 513, Sec. 32, L. 1973	161	1	Rep. Ch. 342, Sec. 3, L. 1973
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110	1-3	Rep. Ch. 5, Sec. 496, L. 1971	Ch. II	1-4	Rep. Ch. 197, Sec. 12-109, L. 1965
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119	1-6	Rep. Ch. 500, Sec. 20, L. 1973	Ch. IV	1-13	Rep. Ch. 197, Sec. 12-109, L. 1965
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134	1	Rep. Ch. 368, Sec. 248, L. 1969	173	28	Rep. Ch. 140, Sec. 20, L. 1977
137	1-4	Rep. Ch. 260, Sec. 12, L. 1967		38	Rep. Ch. 56, Sec. 1, L. 1969
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4	1	Rep. Ch. 5, Sec. 496, L. 1971	81	1	Rep. Ch. 420, Sec. 4, L. 1971
6	1	Rep. Ch. 536, Sec. 45, L. 1975	86	1-2	Rep. Ch. 107, Sec. 18, L. 1965
8	1	Rep. Ch. 196, Sec. 2, L. 1967	91	1	Rep. Ch. 513, Sec. 32, L. 1973
14	1-3	Rep. Ch. 198, Sec. 98, L. 1967	95	1	Rep. Ch. 23, Sec. 88, L. 1975
16	1	51-517	97	1-4	Rep. Ch. 368, Sec. 248, L. 1969
	2	Rep. Ch. 518, Sec. 29, L. 1977	100	2	Rep. Ch. 443, Sec. 6, L. 1973
25	1, 2	Rep. Ch. 513, Sec. 32, L. 1973		4	Rep. Ch. 471, Sec. 2, L. 1973
27	1-10	Rep. Ch. 197, Sec. 223, L. 1967		5	Rep. Ch. 202, Sec. 2, L. 1973
29	1	Rep. Ch. 368, Sec. 248, L. 1969		6	Rep. Ch. 155, Sec. 2, L. 1973
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37	1	Rep. Ch. 300, Sec. 143, L. 1967		2-3	Rep. Ch. 199, Sec. 101, L. 1965
38	1-5	Rep. Ch. 5, Sec. 496, L. 1971		4	Rep. Ch. 266, Sec. 82, L. 1963
41	1	Rep. Ch. 199, Sec. 101, L. 1965		6-10	Rep. Ch. 266, Sec. 82, L. 1963
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59	1	Rep. Ch. 513, Sec. 32, L. 1973	109	1-3	Rep. Ch. 129, Sec. 1, L. 1963
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130	1	Rep. Ch. 368, Sec. 248, L. 1969	205	2-5	Rep. Ch. 158, Sec. 11, L. 1959
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143	1-5	Rep. Ch. 197, Sec. 12-109, L. 1965		8	Rep. Ch. 147, Sec. 242, L. 1963
146	1	Rep. Ch. 264, Sec. 10-102, L. 1963		10	Rep. Ch. 158, Sec. 11, L. 1959
150	2	Rep. Ch. 350, Sec. 363, L. 1974	223	1-31	Rep. Ch. 256, Sec. 2, L. 1973
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160	1-4	Rep. Ch. 197, Sec. 12-109, L. 1965	5	1-13	S. Ch. 137, L. 1949
161	1-7	Rep. Ch. 2, Sec. 63, L. 1971	15	1-4	Rep. Ch. 197, Sec. 12-109, L. 1965
162	1	Rep. Ch. 266, Sec. 82, L. 1963		5	Rep. Ch. 316, Sec. 209, L. 1974
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177	1	Rep. Ch. 13, Sec. 84, L. 1961	31	2-6	Rep. Ch. 13, Sec. 2, L. 1973
183	1	Rep. Ch. 264, Sec. 10-102, L. 1963	1921		
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189	1	Rep. Ch. 300, Sec. 143, L. 1967	4	1	Rep. Ch. 5, Sec. 496, L. 1971
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42	1	Rep. Ch. 199, Sec. 101, L. 1965	123	1	Rep. Ch. 513, Sec. 32, L. 1973
43	1	Rep. Ch. 199, Sec. 101, L. 1965	124	1	Rep. Ch. 197, Sec. 223, L. 1967
48	1	Rep. Ch. 500, Sec. 20, L. 1973	126	1	43-711.2
55	1	Rep. Ch. 491, Sec. 27, L. 1973	129	98	Rep. Ch. 460, Sec. 52, L. 1977
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57	1	Rep. Ch. 513, Sec. 32, L. 1973	140	1	Rep. Ch. 99, Sec. 43, L. 1969
58	1	Rep. Ch. 365, Sec. 2, L. 1974		3	Rep. Ch. 99, Sec. 43, L. 1969
59	1,2	Rep. Ch. 365, Sec. 2, L. 1974	145	1	Rep. Ch. 365, Sec. 2, L. 1974
60	1	Rep. Ch. 513, Sec. 32, L. 1973		3	Rep. Ch. 365, Sec. 2, L. 1974
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62	1	Rep. Ch. 199, Sec. 101, L. 1965	147	21	Rep. Ch. 136, Sec. 1, L. 1961
63	1	Rep. Ch. 5, Sec. 496, L. 1971	155	1-11	Rep. Ch. 525, Sec. 19, L. 1975
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68	1	Rep. Ch. 266, Sec. 82, L. 1963	163	1	Rep. Ch. 158, Sec. 11, L. 1959
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75	1-4	Rep. Ch. 5, Sec. 496, L. 1971	175	1	Rep. Ch. 122, Sec. 12, L. 1965
76	1	Rep. Ch. 513, Sec. 32, L. 1973	177	1	Rep. Ch. 507, Sec. 6, L. 1975
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84	1	Rep. Ch. 18, Sec. 12, L. 1967	187	5	Rep. Ch. 405, Sec. 120, L. 1973
85	1	Rep. Ch. 251, Sec. 28, L. 1961	192	2	Rep. Ch. 194, Sec. 13, L. 1967
88	1	Rep. Ch. 368, Sec. 248, L. 1969		4	Rep. Ch. 194, Sec. 13, L. 1967
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102	1	Rep. Ch. 513, Sec. 32, L. 1973		6	Rep. Ch. 417, Sec. 15, L. 1977
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	2	Rep. Ch. 97, Sec. 9, L. 1977	234	1, 2	Rep. Ch. 365, Sec. 2, L. 1974
	6	Rep. Ch. 97, Sec. 9, L. 1977	235	1	Rep. Ch. 368, Sec. 248, L. 1969
	7	Rep. Ch. 177, Sec. 51, L. 1965	237	3, 4	Rep. Ch. 98, Sec. 22, L. 1977
	9	Rep. Ch. 97, Sec. 9, L. 1977	240	1, 2	Rep. Ch. 5, Sec. 496, L. 1971
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210	2	Rep. Ch. 13, Sec. 84, L. 1961	250	1	Rep. Ch. 315, Sec. 24, L. 1974
211	2	16-2927	254	1	Rep. Ch. 23, Sec. 88, L. 1975
216	1-6	Rep. Ch. 218, Sec. 173, L. 1974	256	1-3	Rep. Ch. 307, Sec. 27, L. 1967
	8-11	Rep. Ch. 218, Sec. 173, L. 1974	262	1	Rep. Ch. 310, Sec. 201, L. 1974
	13	Rep. Ch. 218, Sec. 173, L. 1974		5	Rep. Ch. 310, Sec. 201, L. 1974
	19	Rep. Ch. 218, Sec. 173, L. 1974		32	Rep. Ch. 147, Sec. 242, L. 1963
	33	Rep. Ch. 39, Sec. 9, L. 1973		33	Rep. Ch. 93, Sec. 44, L. 1969
	37,	Rep. Ch. 218, Sec. 173, L. 1974		34	Rep. Ch. 233, Sec. 9, L. 1977
	38	Rep. Ch. 218, Sec. 173, L. 1974	263	1	Rep. Ch. 300, Sec. 143, L. 1967
	41	Rep. Ch. 218, Sec. 173, L. 1974	264	1-3	Rep. Ch. 300, Sec. 143, L. 1967
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	2	Rep. Ch. 75, Sec. 1, L. 1961	61	1	Rep. Ch. 44, Sec. 7, L. 1961
15	1	Rep. Ch. 52, Sec. 24, L. 1977	62	1	Rep. Ch. 513, Sec. 32, L. 1973
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	9	Rep. Ch. 127, Sec. 6, L. 1975	66	3	Rep. Ch. 97, Sec. 9, L. 1977
	11	Rep. Ch. 127, Sec. 6, L. 1975		5	Rep. Ch. 97, Sec. 9, L. 1977
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	10	Rep. Ch. 155, Sec. 11, L. 1977	80	1	Rep. Ch. 439, Sec. 64, L. 1975
	13	Rep. Ch. 126, Sec. 15, L. 1977	83	1	Rep. Ch. 513, Sec. 32, L. 1973
4	1-6	Rep. Ch. 5, Sec. 496, L. 1971	100	1	Rep. Ch. 264, Sec. 10-102, L. 1963
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18	1	Rep. Ch. 5, Sec. 496, L. 1971	104	1	Rep. Ch. 75, Sec. 1, L. 1961; Ch. 5, Sec. 496, L. 1971
22	1	Rep. Ch. 314, Sec. 14, L. 1969	110	1-8	Rep. Ch. 147, Sec. 242, L. 1963
	2	Rep. Ch. 513, Sec. 32, L. 1973	112	1-3	Rep. Ch. 198, Sec. 98, L. 1967
23	1	Rep. Ch. 367, Sec. 1, L. 1975	113	1	Rep. Ch. 365, Sec. 2, L. 1974
24	1-6	Rep. Ch. 197, Sec. 223, L. 1967	121	99	Rep. Ch. 364, Sec. 15, L. 1977
30	1	Rep. Ch. 431, Sec. 176, L. 1975	122	1	Rep. Ch. 5, Sec. 496, L. 1971
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5	1-3	Rep. Ch. 152, Sec. 3, L. 1971	109	6	Rep. Ch. 97, Sec. 32, L. 1961
8	1	Rep. Ch. 466, Sec. 38, L. 1975	113	14	Rep. Ch. 256, Sec. 5, L. 1965
11	1	Rep. Ch. 365, Sec. 2, L. 1974	114	1	Rep. Ch. 75, Sec. 5, L. 1967
12	1-2	Rep. Ch. 368, Sec. 248, L. 1969	115	1	Rep. Ch. 99, Sec. 43, L. 1969
13	1	Rep. Ch. 197, Sec. 12-109, L. 1965	116	1	Rep. Ch. 264, Sec. 10-102, L. 1963
15	1	Rep. Ch. 368, Sec. 248, L. 1969	117	1	Rep. Ch. 443, Sec. 6, L. 1973
16	1	Rep. Ch. 368, Sec. 248, L. 1969	118	1	Rep. Ch. 368, Sec. 248, L. 1969
19	1	S. M.R.App.Civ.P., Rules 9, 10, 25	119	1-11	Rep. Ch. 431, Sec. 176, L. 1975
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28	1-2	Rep. Ch. 300, Sec. 143, L. 1967	121	1	Rep. Ch. 492, Sec. 2, L. 1973
34	1	Rep. Ch. 197, Sec. 223, L. 1967		2	Rep. Ch. 154, Sec. 2, L. 1973
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40	1-2	Rep. Ch. 250, Sec. 24, L. 1963		5, 6	Rep. Ch. 23, Sec. 88, L. 1975
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151	1	Rep. Ch. 5, Sec. 496, L. 1971		13	Rep. Ch. 197, Sec. 12-109, L. 1965
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160	1-5	Rep. Ch. 2, Sec. 63, L. 1971	20	1	Rep. Ch. 99, Sec. 43, L. 1969
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	10	Rep. Ch. 93, Sec. 44, L. 1969		89-90	Rep. Ch. 264, Sec. 10-102, L. 1963
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	80	Rep. Ch. 428, Sec. 116, L. 1973	99	1	Rep. Ch. 94, Sec. 73, L. 1974
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62	1	Rep. Ch. 368, Sec. 248, L. 1969	104	3	Rep. Ch. 99, Sec. 43, L. 1969
65	2	Rep. Ch. 198, Sec. 1, L. 1973	106	2	Rep. Ch. 348, Sec. 107, L. 1974
	3	Rep. Ch. 61, Sec. 11, L. 1977	108	3	Rep. Ch. 428, Sec. 116, L. 1973
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73	1	Rep. Ch. 365, Sec. 2, L. 1974	109	1-2	Rep. Ch. 153, Sec. 14, L. 1965
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	7-A	Rep. Ch. 218, Sec. 173, L. 1974	65	1	Rep. Ch. 5, Sec. 496, L. 1971
125	1	Rep. Ch. 368, Sec. 248, L. 1969	66	1	Rep. Ch. 513, Sec. 32, L. 1973
126	1	Rep. Ch. 368, Sec. 248, L. 1969	67	1	Rep. Ch. 368, Sec. 248, L. 1969
	2	Rep. Ch. 156, Sec. 11, L. 1965	70	4-5	Rep. Ch. 147, Sec. 242, L. 1963
	6-7	Rep. Ch. 156, Sec. 11, L. 1965		6-9	Rep. Ch. 298, Sec. 9, L. 1973
	8	Rep. Ch. 368, Sec. 248, L. 1969		10	Rep. Ch. 147, Sec. 242, L. 1963
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	4	Rep. Ch. 271, Sec. 33, L. 1963	77	1	Rep. Ch. 5, Sec. 496, L. 1971
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27	1, 2	Rep. Ch. 218, Sec. 173, L. 1974	93	1-3	Rep. Ch. 413, Sec. 51, L. 1971
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	8	Rep. Ch. 177, Sec. 51, L. 1965	29-30		Rep. Ch. 99, Sec. 43, L. 1969
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	10	Rep. Ch. 177, Sec. 51, L. 1965		2	Rep. Ch. 155, Sec. 2, L. 1973
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109	1	Rep. Ch. 5, Sec. 496, L. 1971		12	Rep. Ch. 471, Sec. 2, L. 1973
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39	2-6	Rep. Ch. 413, Sec. 51, L. 1971		7	Rep. Ch. 350, Sec. 363, L. 1974
	7	Rep. Ch. 99, Sec. 43, L. 1969		9	Rep. Ch. 350, Sec. 363, L. 1974
	8-11	Rep. Ch. 413, Sec. 51, L. 1971		12	Rep. Ch. 350, Sec. 363, L. 1974
40	1-2	Rep. Ch. 300, Sec. 143, L. 1967		13	Rep. Ch. 541, Sec. 4, L. 1977
42	1	Rep. Ch. 300, Sec. 143, L. 1967	106	1-4	Rep. Ch. 264, Sec. 10-102, L. 1963
45	1	Rep. Ch. 300, Sec. 143, L. 1967	107	1	Rep. Ch. 264, Sec. 10-102, L. 1963
46	1	Rep. Ch. 264, Sec. 10-102, L. 1963	109	1-22	Rep. Ch. 123, Sec. 23, L. 1973
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52	1-2	Rep. Ch. 300, Sec. 143, L. 1967	111	1-11	Rep. Ch. 218, Sec. 173, L. 1974
58	1	Rep. Ch. 117, Sec. 1, L. 1973	116	1-5	Rep. Ch. 300, Sec. 143, L. 1967
59	1	Rep. Ch. 13, Sec. 84, L. 1961	118	1-3	Rep. Ch. 197, Sec. 223, L. 1967
60	1	Rep. Ch. 199, Sec. 101, L. 1965	122	1	Rep. Ch. 5, Sec. 496, L. 1971
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165	1	Rep. Ch. 466, Sec. 38, L. 1975	205	1	Rep. Ch. 5, Sec. 496, L. 1971
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177	1	Rep. Ch. 368, Sec. 248, L. 1969		4-6	Rep. Ch. 210, Sec. 1, L. 1974
180	1	Rep. Ch. 13, Sec. 84, L. 1961		8, 9	Rep. Ch. 210, Sec. 1, L. 1974
182	13	Rep. Ch. 147, Sec. 242, L. 1963	219	1	Rep. Ch. 5, Sec. 496, L. 1971
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2	1-4	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963	49	1	Rep. Ch. 368, Sec. 248, L. 1969
10	1, 2	Rep. Ch. 5, Sec. 496, L. 1971	50	1	Rep. Ch. 5, Sec. 496, L. 1971
11	1	Rep. Ch. 199, Sec. 101, L. 1965	52	1	Rep. Ch. 507, Sec. 6, L. 1975
15	1	Rep. Ch. 5, Sec. 496, L. 1971	57	1	Rep. Ch. 266, Sec. 82, L. 1963
21	1	51-511	61	1	Rep. Ch. 253, Sec. 208, L. 1974
23	1-3	Rep. Ch. 368, Sec. 248, L. 1969	67	1	Rep. Ch. 98, Sec. 22, L. 1977
26	1	Rep. Ch. 368, Sec. 248, L. 1969	69	1-4	Rep. Ch. 197, Sec. 12-109, L. 1965
27	1	Rep. Ch. 368, Sec. 248, L. 1969	72	1	Rep. Ch. 199, Sec. 101, L. 1965
28	1-4	Rep. Ch. 368, Sec. 248, L. 1969	74	1	Rep. Ch. 42, Sec. 2, L. 1961
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30	1, 2	Rep. Ch. 267, Sec. 34, L. 1974	78	1-6	Rep. Ch. 271, Sec. 33, L. 1963
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109	1	Rep. Ch. 99, Sec. 43, L. 1969	158	1, 2	Rep. Ch. 5, Sec. 496, L. 1971
110	1-5	Rep. Ch. 99, Sec. 43, L. 1969		3-6	Rep. Ch. 2, Sec. 63, L. 1971
111	1	Rep. Ch. 121, Sec. 52, L. 1974	162	5, 6	Rep. Ch. 369, Sec. 20, L. 1969
	2	71-2202	166	1-10	Rep. Ch. 2, Sec. 63, L. 1971
	3	Rep. Ch. 80, Sec. 14, L. 1961	167	1-3	Rep. Ch. 368, Sec. 248, L. 1969
	4	Rep. Ch. 177, Sec. 51, L. 1965	170	1	Rep. Ch. 197, Sec. 223, L. 1967
	5	71-2203		3	Rep. Ch. 197, Sec. 223, L. 1967
	6	71-2204	171	1-14	Rep. Ch. 197, Sec. 223, L. 1967
	7	71-2205	173	4	Rep. Ch. 397, Sec. 19, L. 1977
	8	Rep. Ch. 121, Sec. 52, L. 1974	174	1-2	Omitted
113	1	Rep. Ch. 14, Sec. 1, L. 1975	176	1	46-801.2
116	1	Rep. Ch. 5, Sec. 496, L. 1971	180	1	Rep. Ch. 500, Sec. 20, L. 1973
119	1-5	Rep. Ch. 107, Sec. 18, L. 1965	181	1	Rep. Ch. 199, Sec. 1, L. 1961
123	1, 2	Rep. Ch. 329, Sec. 54, L. 1974	184	1-9	Rep. Ch. 419, Sec. 11, L. 1975
125	1, 2	Rep. Ch. 2, Sec. 63, L. 1971	185	1, 2	Rep. Ch. 536, Sec. 45, L. 1975
127	1-2	Rep. Ch. 197, Sec. 223, L. 1967	193	5	Rep. Ch. 44, Sec. 3, L. 1977
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131	1-5	Rep. Ch. 5, Sec. 496, L. 1971	197	1	Rep. Ch. 184, Sec. 8, L. 1961
132	1	Rep. Ch. 5, Sec. 496, L. 1971	198	1	Rep. Ch. 266, Sec. 82, L. 1963
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135	1-5	Rep. Ch. 5, Sec. 496, L. 1971	199	1	Rep. Ch. 253, Sec. 208, L. 1974
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8	1	Rep. Ch. 365, Sec. 2, L. 1974
10	1	Rep. Ch. 300, Sec. 143, L. 1967
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19	1	Rep. Ch. 365, Sec. 2, L. 1974
20	1	Rep. Ch. 365, Sec. 2, L. 1974
21	1	Rep. Ch. 197, Sec. 223, L. 1967
22	1, 2	Rep. Ch. 2, Sec. 63, L. 1971
23	1-7	Rep. Ch. 121, Sec. 52, L. 1974
26	1	Rep. Ch. 368, Sec. 248, L. 1969
27	1	Rep. Ch. 5, Sec. 496, L. 1971
28	1	Rep. Ch. 5, Sec. 496, L. 1971
30	1	Rep. Ch. 68, Sec. 10, L. 1967
31	1-11	Rep. Ch. 300, Sec. 143, L. 1967
32	1	Rep. Ch. 300, Sec. 143, L. 1967
33	1	Rep. Ch. 300, Sec. 143, L. 1967

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50	1-3	Rep. Ch. 419, Sec. 11, L. 1975
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60	1	Rep. Ch. 365, Sec. 2, L. 1974
61	1	Rep. Ch. 260, Sec. 12, L. 1967
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	10	3-3112	182	1	Rep. Ch. 38, Sec. 2, L. 1963
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87	1	Rep. Ch. 417, Sec. 15, L. 1977	188	1	Rep. Ch. 5, Sec. 496, L. 1971
88	5	Rep. Ch. 511, Sec. 58, L. 1973	189	1	Rep. Ch. 197, Sec. 223, L. 1967
90	1	Rep. Ch. 5, Sec. 496, L. 1971	190	1-3	Rep. Ch. 2, Sec. 63, L. 1971
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115	1	Rep. Ch. 2, Sec. 63, L. 1971	196	1-6	Rep. Ch. 428, Sec. 116, L. 1973
117	1	Rep. Ch. 368, Sec. 248, L. 1969	200	1	Rep. Ch. 500, Sec. 20, L. 1973
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	15	Rep. Ch. 56, Sec. 1, L. 1969	266	1-9	Rep. Ch. 419, Sec. 11, L. 1975
	17	Rep. Ch. 9, Sec. 54, L. 1977	268	1	Rep. Ch. 199, Sec. 101, L. 1965
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230	1	Rep. Ch. 471, Sec. 2, L. 1973	275	1-6	Rep. Ch. 5, Sec. 496, L. 1971
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13	1	Rep. Ch. 253, Sec. 208, L. 1974	86	1, 2	Rep. Ch. 387, Sec. 121, L. 1975
14	1	Rep. Ch. 260, Sec. 12, L. 1967	89	1-3	Rep. Ch. 5, Sec. 496, L. 1971
19	1	Rep. Ch. 536, Sec. 45, L. 1975	92	1	Rep. Ch. 368, Sec. 248, L. 1969
20	1	Rep. Ch. 272, Sec. 2, L. 1959	93	2	Rep. Ch. 439, Sec. 64, L. 1975
23	1	Rep. Ch. 94, Sec. 73, L. 1974	103	1	Rep. Ch. 420, Sec. 4, L. 1971
27	1, 2	Rep. Ch. 513, Sec. 32, L. 1973	105	1	Rep. Ch. 197, Sec. 223, L. 1967
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30	1	Rep. Ch. 3, Sec. 3, L. 1965; Ch. 2, Sec. 63, L. 1971	111	1	Rep. Ch. 300, Sec. 143, L. 1967
38	1	Rep. Ch. 196, Sec. 2, L. 1967	112	1-3	Rep. Ch. 365, Sec. 2, L. 1974
41	1	Rep. Ch. 252, Sec. 2, L. 1973	113	1	Rep. Ch. 154, Sec. 1, L. 1959
43	1	Rep. Ch. 513, Sec. 32, L. 1973	115	1	Rep. Ch. 405, Sec. 120, L. 1973
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66	1	Rep. Ch. 189, Sec. 2, L. 1963	128	1	Rep. Ch. 129, Sec. 1, L. 1963
69	1	Rep. Ch. 97, Sec. 9, L. 1977	129	1	Rep. Ch. 518, Sec. 29, L. 1977
71	1	Rep. Ch. 365, Sec. 2, L. 1974		2	51-511
75	1	Rep. Ch. 368, Sec. 248, L. 1969	130	1	Rep. Ch. 5, Sec. 496, L. 1971
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146	1	Rep. Ch. 5, Sec. 496, L. 1971		4	Rep. Ch. 257, Sec. 10, L. 1965
149	1	Rep. Ch. 264, Sec. 10-102, L. 1963	191	1	Rep. Ch. 5, Sec. 496, L. 1971
152	1, 2	Rep. Ch. 511, Sec. 58, L. 1973		2	Rep. Ch. 184, Sec. 8, L. 1961
153	4	Rep. Ch. 142, Sec. 3, L. 1977	198	1	Rep. Ch. 369, Sec. 20, L. 1969
	7	Rep. Ch. 147, Sec. 242, L. 1963	199	1-3	Rep. Ch. 5, Sec. 496, L. 1971
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160	1	Rep. Ch. 368, Sec. 248, L. 1969	202	1	Rep. Ch. 369, Sec. 20, L. 1969
161	1	Rep. Ch. 253, Sec. 108, L. 1974	203	10	Rep. Ch. 350, Sec. 363, L. 1974
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171	1	Rep. Ch. 198, Sec. 98, L. 1967	209	1	Rep. Ch. 387, Sec. 121, L. 1975
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174	1	Rep. Ch. 99, Sec. 43, L. 1969			
176	1	Rep. Ch. 428, Sec. 116, L. 1973			
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19	1-3	Rep. Ch. 264, Sec. 10-102, L. 1963	81	1	Rep. Ch. 417, Sec. 15, L. 1977
20	1-8	Rep. Ch. 365, Sec. 2, L. 1974		3	Rep. Ch. 511, Sec. 58, L. 1973
25	1	Rep. Ch. 197, Sec. 12-109, L. 1965		6	Rep. Ch. 417, Sec. 15, L. 1977
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28	1	Rep. Ch. 365, Sec. 2, L. 1974	88	1, 2	Rep. Ch. 126, Sec. 15, L. 1977; Ch. 508, Sec. 27, L. 1977
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175	1	Rep. Ch. 197, Sec. 12-109, L. 1965	223	1	Rep. Ch. 221, Sec. 16 L. 1971
176	1	Rep. Ch. 335, Sec. 21, L. 1974		4	Rep. Ch. 511, Sec. 58, L. 1973
177	1	Rep. Ch. 197, Sec. 12-109, L. 1965		5	Rep. Ch. 221, Sec. 16, L. 1971
179	1	Rep. Ch. 163, Sec. 1, L. 1959	225	1	Rep. Ch. 365, Sec. 2, L. 1974
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181	1	Rep. Ch. 264, Sec. 10-102, L. 1963	228	1, 2	Rep. Ch. 5, Sec. 496, L. 1971
183	1	Rep. Ch. 197, Sec. 12-109, L. 1965	230	1	Rep. Ch. 147, Sec. 4, L. 1971
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184	1	Rep. Ch. 365, Sec. 2, L. 1974	232	1	Rep. Ch. 5, Sec. 496, L. 1971
186	1	Rep. Ch. 232, Sec. 9, L. 1961	233	1	Rep. Ch. 5, Sec. 496, L. 1971
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189	1	Rep. Ch. 513, Sec. 32, L. 1973	240	1	Rep. Ch. 38, Sec. 18, L. 1977
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	7-9	Rep. Ch. 298, Sec. 9, L. 1973	234	1	Rep. Ch. 471, Sec. 2, L. 1973
177	1	Rep. Ch. 329, Sec. 54, L. 1974		2	Rep. Ch. 202, Sec. 2, L. 1973
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	3	79-904		18	Rep. Ch. 197, Sec. 12-109, L. 1965
	4	Repealing Clause		19	Rep. Ch. 47, Sec. 14, L. 1963
83	1	Rep. Ch. 5, Sec. 496, L. 1971		20	46-202
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85	1-7	Rep. Ch. 464, Sec. 1, L. 1977		23	46-1909
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86	1	Rep. Ch. 5, Sec. 496, L. 1971		25	Rep. Ch. 253, Sec. 208, L. 1974
	2	Repealing Clause		26	59-540
87	1	Rep. Ch. 2, Sec. 63, L. 1971		27	Rep. Ch. 94, Sec. 73, L. 1974
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93	1	Rep. Ch. 300, Sec. 143, L. 1967		2	Repealing Clause
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	13	Rep. Ch. 142, Sec. 3, L. 1977	108	1	32-2142
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154	1	84-4903.2		2	Repealing Clause
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59	1	Rep. Ch. 300, Sec. 143, L. 1967		2	84-6208 note
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# REVISED CODES OF MONTANA

## VOLUME 1

### Part 2

### 1977 Cumulative Supplement

#### *Containing*

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE  
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF  
REPLACEMENT VOLUME 1 (PART 2) OF  
THE 1947 REVISED CODES

#### AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 1  
(PART 2) THROUGH VOLUME 557, PACIFIC  
REPORTER (2nd SERIES)

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# MONTANA REVISED CODES

## TITLE 1—AERONAUTICS

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### CHAPTER 1—STATE AERONAUTICAL REGULATORY ACT—DEFINITIONS—POLICY

#### Section

- 1-101. Act, how cited.  
1-102. Definitions.

**1-101. Act, how cited.** Sections 1-101 through 1-103, 1-201 through 1-205, 1-301 through 1-310, 1-401, and 1-501 through 1-504 may be cited as the "State Aeronautical Regulatory Act."

**History:** En. Sec. 1, Ch. 152, L. 1945;      **Amendments**  
amd. Sec. 1, Ch. 348, L. 1974.

#### Compiler's Notes

Sections 1-201, 1-202 and 1-504, included in the above references, were repealed by Sec. 107, Ch. 348, Laws 1974.

The 1974 amendment substituted "Sections 1-101 through 1-103, 1-201 through 1-205, 1-301 through 1-310, 1-401, and 1-501 through 1-504" for "This act, divided into titles and sections according to the following table of contents."

**1-102. Definitions.** Unless the context requires otherwise, in this title:

(1) "Department" means the department of community affairs provided for in Title 82A, chapter 9.

(2) "Aeronautics" means transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft power plants and accessories, including the repair, packing, and maintenance of parachutes; the design, establishment, construction, extension, operation, improvement, repair, or maintenance of airports, restricted landing areas, or other air navigation facilities; and air instruction.

(3) "Aircraft" means a contrivance used or designed for navigation of or flight in the air.

(4) "Public aircraft" means an aircraft used exclusively in the service of any government or of a political subdivision of a government, including

the government of a state, territory, or possession of the United States, or the District of Columbia, but not including a government-owned aircraft engaged in carrying persons or property for commercial purposes.

(5) "Civil aircraft" means an aircraft other than a public aircraft.

(6) "Airport" means an area of land or water, except a restricted landing area, which is designed for the landing and take-off of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving or discharging passengers or cargo, and all appurtenant areas used or suitable for airport buildings or other airport facilities, and all appurtenant rights of way.

(7) "Restricted landing area" means an area of land, water, or both, which is used or is made available for the landing and take-off of aircraft, the use of which shall, except in case of emergency, be only as provided by the department.

(8) "Air navigation facility" means a facility used in, available for use in, or designed for use in, aid of air navigation, including airports, restricted landing areas, and structures, mechanisms, lights, beacons, marks, communicating systems, or other instrumentalities or devices used or useful as an aid, or constituting an advantage or convenience, to the safe taking-off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport or restricted area, and any combination of these facilities.

(9) "Air navigation" means the operation or navigation of aircraft in the air space over this state, or upon an airport or restricted landing area within this state.

(10) "Operation of aircraft" or "operate aircraft" means the use of aircraft for the purpose of air navigation, and includes the navigation or piloting of aircraft. A person who causes or authorizes the operation of aircraft, whether with or without the right of legal control (in the capacity of owner, lessee, or otherwise) of the aircraft, operates the aircraft.

(11) "Airman" means an individual who engages, as the person in command, or as pilot, mechanic, or member of the crew, in the navigation of aircraft while under way and (excepting individuals employed outside the United States, an individual employed by a manufacturer of aircraft, aircraft engines, propellers, or appliances to perform duties as inspector or mechanic in connection with them, and an individual performing inspection or mechanical duties in connection with aircraft owned or operated by him) an individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft engines, propellers, or appliances; and an individual who serves in the capacity of aircraft dispatcher or air-traffic control-tower operator.

(12) "Air instruction" means the imparting of aeronautical information by an aeronautics instructor or in or by an air school or flying club.

(13) "Air school" means a person engaged in giving or offering to give instruction in aeronautics, either in flying or ground subjects, or both, for or without hire or reward, and advertising, representing, or holding himself out as giving or offering to give that instruction. It does not include a public school or university of this state, or an institution of higher learning accredited and approved for carrying on collegiate work.



(14) "Aeronautics instructor" means an individual engaged in giving instruction or offering to give instruction in aeronautics, either in flying or ground subjects, or both, for hire or reward, without advertising that occupation, without calling his facilities an "air school" or anything equivalent to an "air school," and without employing or using other instructors. It does not include an instructor in a public school or university of this state, or an institution of higher learning accredited and approved for carrying on collegiate work, while engaged in his duties as an instructor.

(15) "Flying club" means a person other than an individual, which, neither for profit nor reward, owns, leases, or uses one or more aircraft for the purpose of instruction or pleasure or both.

(16) "Person" means an individual, firm, partnership, private, municipal, or public corporation, company, association, joint stock association, or body politic; and includes a trustee, receiver, assignee, or other similar representative.

(17) "State airway" means a route in the navigable air space over and above the lands or waters of this state, designated by the department as a route suitable for air navigation.

(18) "Navigable air space" means air space above the minimum altitudes of flight prescribed by the laws of this state or by regulations of the department.

(19) "Municipality" or "political subdivision" means a county, city, village, or town of this state and any other political subdivision, public corporation, authority, or district in this state authorized by law to acquire, establish, construct, maintain, improve, and operate airports and other air navigation facilities.

(20) "Airport protection privileges" means easements through or other interests in air space over land or water, interests in airport hazards outside the boundaries of airports or restricted landing areas, and other protection privileges, the acquisition or control of which is necessary to ensure safe approaches to the landing areas of airports and restricted landing areas and the safe and efficient operation thereof.

(21) "Airport hazard" means a structure, object of natural growth, or use of land which obstructs the air space required for the flight of aircraft in landing or taking off at an airport or restricted landing area or is otherwise hazardous to landing or taking off.

History: En. Sec. 2, Ch. 152, L. 1945; amd. Sec. 2, Ch. 348, L. 1974; amd. Sec. 2, Ch. 213, L. 1975.

#### Amendments

The 1974 amendment inserted subdivision (1); deleted a definition reading "Commission" means the state aeronautical commission created by this act; 'state' or 'this state' means the state of Montana"; substituted "department" for "commission" in subdivisions (7), (17) and (18); deleted "now known, or hereafter

invented" after "contrivance" in subdivision (3); deleted "whether heretofore or hereafter established" at the end of subdivision (6); inserted "landing" after "Restricted" in subdivision (7); deleted "other than one owned or controlled by the federal government" after "a facility" at the beginning of subdivision (8); inserted "private, municipal, or public" before "corporation" in subdivision (16); inserted "or 'political subdivision'" at the beginning of subdivision (19); deleted a final subdivision reading "The singular shall

include the plural, and the plural the singular"; and made numerous minor changes in style, punctuation and phraseology.

The 1975 amendment substituted "department of community affairs" for "department of intergovernmental relations" in subdivision (1).

## CHAPTER 2—DEPARTMENT OF INTERGOVERNMENTAL RELATIONS— BOARD OF AERONAUTICS—POWERS AND DUTIES

### Section

1-203. Meetings of the board.

1-204. General powers and duties of department pertaining to aeronautics.

1-204.1. Co-operation with the federal government.

1-204.2. Rules, orders, and standards—adoption—conformity with federal legislation and rules.

1-204.3. Co-operation with municipalities.

1-204.4. Enforcement of aeronautics laws—investigations and hearings—limitations on use of reports.

1-205. Federal aid.

### 1-201, 1-202. Repealed.

#### Repeal

Sections 1-201 and 1-202 (Secs. 4, 5, Ch. 152, L. 1945) relating to creation and

organization of the state aeronautics commission, were repealed by Sec. 107, Ch. 348, Laws 1974.

**1-203. Meetings of the board.** Regular meetings shall be held at the board's offices at Helena, but, whenever the convenience of the public or of the parties may be promoted, or delay or expense may be prevented, it may hold hearings or proceedings at any other place designated by it.

History: En. Sec. 6, Ch. 152, L. 1945; amd. Sec. 3, Ch. 348, L. 1974.

incur the necessary expense for office furniture, stationery, printing, incidental expenses, and other expenses necessary for the enforcement of this act and the general promotion of aeronautics within the state"; substituted "the board's offices" for "its offices"; and deleted a final sentence reading "It may employ such clerical and other employees and assistants as it may deem necessary for the proper transaction of its business and shall fix their salaries."

#### Amendments

The 1974 amendment substituted the present caption for "Office and expense—employees"; deleted a first sentence which read "Suitable offices and office equipment shall be provided by the state for the commission in the city of Helena, and it may maintain offices in any other city in the state that it may designate and may

**1-204. General powers and duties of department pertaining to aeronautics.** (1) The department shall supervise aeronautics within this state. It shall encourage, foster, and assist in the development of aeronautics and encourage the establishment of airports and other air navigation facilities.

(2) The department shall co-operate with and assist the federal government, the political subdivisions of this state, and others engaged in aeronautics or the promotion of aeronautics, and shall co-ordinate the aeronautical activities of these bodies.

(3) The department may designate, design, and establish, expand, or modify a state airways system which will best serve the interests of the state. It may chart that airways system and arrange for publication and distribution of maps, charts, notices, and bulletins relating to the airways which may be required in the public interest. The system shall be supplementary to and co-ordinated in design and operation with the federal airways system. It may include all types of air navigation facilities, but the facilities must conform to federal safety standards.



(4) The department may draft and recommend necessary legislation to advance the interests of the state in aeronautics and represent the state in aeronautical matters before federal agencies and other state agencies.

(5) The department may participate as party plaintiff or defendant, or as intervener on behalf of the state or a municipality or citizen, in a controversy involving any claimed encroachment by the federal government or any foreign state upon state or individual rights pertaining to aeronautics.

(6) The department may use the facilities and services of other agencies of the state when reasonably available.

(7) The department may enter into any contracts necessary to the execution of the powers granted the department by this title.

(8) The department shall grant no exclusive right for the use of an airway, airport, restricted landing area, or other air navigation facility under its jurisdiction. This subsection does not prevent the making of leases in accordance with other provisions of this title.

**History:** En. Sec. 7, Ch. 152, L. 1945; amd. Sec. 4, Ch. 348, L. 1974.

#### Amendments

The 1974 amendment rewrote this section completely, deleting a large portion of it, substituting references to the depart-

ment for references to the commission throughout, substituting "title" for "act" in subdivisions (7) and (8); and making numerous minor changes in style, punctuation and phraseology. For version prior to amendment, see parent volume.

**1-204.1. Co-operation with the federal government.** (1) The department may confer with or hold joint hearings with any federal aeronautical agency in connection with any matter arising under this title or relating to the sound development of aeronautics, and may avail itself of the co-operation, services, records, and facilities of federal agencies, as fully as practicable, in the administration and enforcement of this title. It shall reciprocate by furnishing to the federal agencies its co-operation, services, records, and facilities, to the extent practicable.

(2) It shall report to the appropriate federal agency all accidents in aeronautics in this state of which it is informed and preserve, protect, and prevent the removal of the component parts of any aircraft involved in an accident being investigated by it until a federal agency begins an investigation. It shall report to the appropriate federal agency all refusals by it to register federal licenses, certificates, or permits, and all revocations of certificates of registration, and the reasons for its action, and all penalties of which it has knowledge imposed upon airmen for violations of the laws of this state relating to aeronautics or for violations of the rules or orders of the department.

**History:** En. 1-204.1 by Sec. 5, Ch. 348, L. 1974.

#### Title of Act

An act for the codification and general revision of the laws relating to the department of intergovernmental relations.

**1-204.2. Rules, orders, and standards—adoption—conformity with federal legislation and rules.** (1) The department may perform acts; issue and amend orders; adopt reasonable, general, or special rules; and es-

establish minimum standards, consistent with this title, as it considers necessary to carry out this title and to perform its duties, for the purpose of protecting and ensuring the general public interest and safety; the safety of persons receiving instruction concerning, or operating, using, or traveling in aircraft, and of persons and property on land or water; and to develop and promote aeronautics in this state.

(2) All rules prescribed by the department under this title shall be kept in conformity, as nearly as may be, with the then current federal legislation governing aeronautics and the rules and standards adopted or issued under federal legislation.

History: En. 1-204.2 by Sec. 6, Ch. 348,  
L. 1974.

**1-204.3. Co-operation with municipalities.** (1) The department may offer its engineering or other technical services, without charge, to a municipality desiring them in connection with the construction, maintenance, or operation or proposed construction, maintenance, or operation of an airport or restricted landing area.

(2) The department may render assistance in the acquisition, development, operation, or maintenance of airports owned, controlled, or operated by municipalities in this state, out of appropriations made by the legislature for that purpose.

(3) Municipalities may co-operate with the department in the development of aeronautics and aeronautics facilities in this state.

History: En. 1-204.3 by Sec. 7, Ch. 348,  
L. 1974.

**1-204.4. Enforcement of aeronautics laws—investigations and hearings—limitations on use of reports.** (1) The department and every state, county, and municipal officer charged with the enforcement of state or municipal laws, shall enforce and assist in the enforcement of this title and of all rules adopted under it, and of all other laws of this state relating to aeronautics. In the aid of that enforcement, the department possesses general police powers. The department may also, in the name of the state, enforce this title and the rules adopted under it by injunction in the courts of this state.

(2) The department may hold investigations, inquiries, and hearings concerning matters covered by this title, by its orders and rules, and concerning accidents in aeronautics within this state. An officer or employee of the department designated to hold an investigation or hearing may administer oaths and affirmations; certify official acts; issue subpoenas; and compel the attendance and testimony of witnesses and the production of papers, books, and documents. In case of failure to comply with a subpoena or order issued under this title, the department may invoke the aid of a state court of general jurisdiction. The court may then order the witness to comply with the requirements of the subpoena or order, or to give evidence pertaining to the matter in question. A failure to obey the order of the court may be punished as a contempt.



(3) The reports of investigations or hearings may not be admitted in evidence or used for any purpose in any suit, action, or proceedings, growing out of a matter referred to in the investigation, hearing, or report, except in case of criminal or other proceedings instituted in behalf of the department or this state under this title and other laws of this state relating to aeronautics. An officer or employee of the department may not be required to testify to any facts ascertained in, or information gained by reason of his official capacity, or be required to testify as an expert witness in a suit, action, or proceeding involving an aircraft. The department may, in its discretion, make available to appropriate federal and state agencies information and material developed in the course of its hearings and investigations.

History: En. 1-204.4 by Sec. 8, Ch. 348, L. 1974.

**1-205. Federal aid.** (1) The department may co-operate with the government of the United States, and any agency or department thereof, in the acquisition, construction, improvement, maintenance, and operation of airports and other air navigation facilities in this state, and may comply with the laws of the United States and any regulations made under those laws for the expenditure of federal moneys upon airports and other navigation facilities.

(2) The department may accept, receive, and receipt for federal moneys and other moneys, either public or private, for and in behalf of this state, or a municipality of this state, for the acquisition, construction, improvement, maintenance, and operation of airports and other air navigation facilities, whether the work is to be done by the state or by the municipalities, or jointly, aided by grants of aid from the United States, upon terms and conditions prescribed by the laws of the United States and any rules made under them. The department may act as agent of a municipality of this state upon the request of the municipality, in accepting, receiving, and receipting for moneys in its behalf for airports or other air navigation facility purposes, and in contracting for the acquisition, construction, improvement, maintenance, or operation of airports or other air navigation facilities, financed either in whole or in part by federal moneys. The governing body of a municipality may designate the department as its agent for those purposes and enter into an agreement with it prescribing the terms and conditions of the agency in accordance with federal laws and rules. Moneys paid by the United States government shall be retained by the state or paid to the municipalities under terms and conditions imposed by the United States government in making the grants.

(3) All contracts for the acquisition, construction, improvement, maintenance, and operation of airports, or other air navigation facilities made by the department, either as the agent of this state or as the agent of a municipality, shall be made under the laws of this state governing the making of like contracts by the state or by municipalities. However, where the acquisition, construction, improvement, maintenance, and operation of an airport, landing strip, or other air navigation facility is financed wholly or partially with federal moneys, the department, as agent of the

state or of a municipality of the state, may let contracts in the manner prescribed by the federal authorities, acting under the laws of the United States, and any rules made under them.

(4) All moneys accepted for disbursement by the department under subsection (2) of this section shall be deposited in the state treasury, and, unless otherwise prescribed by the authority from which the money is received, kept in separate funds, designated according to the purposes for which the moneys were made available, and held by the state in trust for those purposes. All those moneys are appropriated for the purposes for which they were made available, to be spent in accordance with federal laws and regulations and with this title. The department may, whether acting for this state or as the agent of any of its municipalities, or when requested by the United States government or an agency or department of the United States, disburse the moneys for the designated purposes, but this does not preclude any other authorized method of disbursement.

History: En. Sec. 8, Ch. 152, L. 1945; amd. Sec. 9, Ch. 348, L. 1974.

#### Amendments

The 1974 amendment substituted references to the department for references to the commisison throughout the section; de-

leted "notwithstanding any other state law to the contrary" at the end of subsection (3); substituted "title" for "act" at the end of the second sentence in subsection (4); and made numerous minor changes in style, punctuation and phraseology.

### CHAPTER 3—REGULATION AND LICENSES

#### Section

- 1-301. Regulation of aircraft, airmen, airports, and air instruction.
- 1-302. Exhibition of licenses and certificates.
- 1-303. Air instruction without license or certificate unlawful.
- 1-304. Licensing of airports and other air navigation facilities.
- 1-305. Hearings on applications for certificates and licenses.
- 1-306. Standards for issuing certificates of approval and licenses.
- 1-308. Revocation of certificate of approval and licenses.
- 1-310. Orders of department.
- 1-311. "Commercial air operator" defined.
- 1-314. Commercial air operators to procure insurance.
- 1-315. Department to set amount of insurance.
- 1-316. Submission of evidence of insurance to department.
- 1-318. Continuation of insurance—notice to department upon cancellation.
- 1-319. Department to establish rules.
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- 1-322.1. Definitions.
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- 1-323.1. Certificates of public convenience and necessity—requirement—issuance.
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- 1-323.3. Certificates of public convenience and necessity—suspension—amendment—revocation.
- 1-323.4. Establishment of through and joint rates—discontinuance of service.
- 1-323.5. Insurance.
- 1-323.6. Violations—enforcement—appeals and judicial determinations.
- 1-324. Publication of notice.
- 1-325. Aircraft must be registered—situs for registration.
- 1-326. Penalty for late registration, evasion, or false registration statement.

**1-301. Regulation of aircraft, airmen, airports, and air instruction. (1)**  
In order to promote the general public interest and safety and to carry out the purposes of this title, the department may:



(a) Require the annual registration of federal licenses, permits, or certificates of civil aircraft engaged in air navigation within this state, of airmen engaged in aeronautics within this state, and of aeronautics instructors giving instruction in flying subjects, and may issue certificates of registration. The certificates of registration constitute licenses of the aircraft, airmen, and instructors for operations within this state to the extent permitted by the federal licenses, certificates, or permits so registered. The department may charge a fee for the registration of each federal license, certificate, or permit not exceeding one dollar (\$1). It may accept as evidence of the holding of a federal license, certificate, or permit the verified application of the owner of the aircraft, the airman, or the instructor. The application shall contain information which the department may by rule or order prescribe.

(b) Register aircraft repair shops, aircraft, aircraft parts and sales dealers, and other persons operating in aviation and license aircraft repair shops, aircraft, aircraft parts and dealers, and other persons operating in aviation, air schools, and aeronautics instructors giving instruction in ground subjects, in accordance with rules to be adopted by the department, and may annually renew these licenses. It may charge for the original licensing of aircraft repair shops, aircraft, aircraft parts and sales dealers, and other persons operating in aviation, air schools, and aeronautics instructors not more than one dollar (\$1) and for the renewal of a license not more than one dollar (\$1).

(c) Approve airport and restricted landing area sites and license airports, restricted landing areas, or other air navigation facilities, in accordance with rules adopted by the department, and may annually renew these licenses. Licenses granted under this section or under any prior law shall be annually renewed upon payment of the fee. The department may not charge for approving certificates of proposed property acquisition for airport or restricted landing area purposes. It may charge for the issuance and annual renewal of each license for an airport or restricted landing area not to exceed one dollar (\$1).

(d) Temporarily or permanently revoke a license or certificate of registration issued for an aircraft, airman, air school, or aeronautics instructor, upon notification by the civil aeronautics authority that it has revoked the license or certificate of that aircraft, airman, air school, or aeronautics instructor, giving reasons for the action.

(2) Except as provided in subsection (3) of this section, a person may not operate or cause or authorize to be operated a civil aircraft within this state unless the aircraft has an appropriate effective license, certificate, or permit issued by the United States government which has been registered with the department and the registration with the department is in force, and a person may not engage in aeronautics as an airman in this state unless he has from the department an effective certificate of registration of an appropriate effective airman's license, certificate, or permit issued by the United States government authorizing him to engage in the particular class of aeronautics in which he is engaged.

(3) The provisions of subsections 1(b) and 1(d) of this section do not apply to:

(a) An aircraft which has been licensed by a foreign country with which the United States has a reciprocal agreement covering the operations of that licensed aircraft;

(b) An aircraft which is owned by a nonresident of this state who is lawfully entitled to operate the aircraft in the state of his residence;

(c) An aircraft engaged principally in commercial flying constituting an act of interstate or foreign commerce;

(d) An airman operating military or public aircraft or an aircraft licensed by a foreign country with which the United States has a reciprocal agreement covering the operation of that licensed aircraft;

(e) A person operating model aircraft or a person piloting an aircraft which is equipped with fully functioning dual controls when a licensed instructor is in full charge of one set of the controls and the flight is solely for instruction or for the demonstration of the aircraft to a prospective purchaser;

(f) A nonresident operating aircraft in this state who is lawfully entitled to operate aircraft in the state of residence;

(g) An airman while operating or taking part in the operation of an aircraft engaged principally in commercial flying constituting an act of interstate or foreign commerce.

History: En. Sec. 9, Ch. 152, L. 1945; amd. Sec. 10, Ch. 348, L. 1974.

#### Amendments

The 1974 amendment substituted "title" for "act" in the preliminary clause of subsection (1); substituted references to the department for references to the commission throughout the section; deleted at the end of the second sentence of subdivision (1)(c) a clause reading "and licenses shall be granted for airports and restricted landing areas which were being operated on or before the first day of April, 1945, without the requirement of a

certificate of approval, unless the commission shall reasonably determine, after a public hearing to be called by it and held in the same manner and upon the same notice as is provided for hearings upon certificates of approval or original licenses, that the operation of such airport or restricted landing area is hazardous to persons operating, using or traveling in aircraft or to persons and property on the ground"; deleted "bona fide" before "prospective purchaser" at the end of subdivision (2)(e); and made numerous minor changes in style, punctuation, and phraseology.

**1-302. Exhibition of licenses and certificates.** The federal license, certificate, or permit, and the evidence of registration in this or another state, if any, required for an airman shall be kept in the personal possession of the airman when he is operating within this state and must be presented for inspection upon the demand of a passenger, a peace officer of this state, an authorized official or employee of the department, or an official, manager, or person in charge of an airport in this state upon which he lands, or upon the reasonable request of any other person. The federal aircraft license, certificate, or permit, and the evidence of registration in this or another state, if any, required for aircraft must be carried in every aircraft operating in this state at all times and must be conspicuously posted in the aircraft where it may readily be seen by passengers or inspectors and must be presented for inspection upon demand of a passenger, a peace officer of this state, an authorized official or employee of the department, or an official, manager, or person in charge of an airport in this state upon which it lands, or upon the reasonable request of any person.



**History:** En. Sec. 10, Ch. 152, L. 1945; amd. Sec. 11, Ch. 348, L. 1974.

**Amendments**

The 1974 amendment deleted "member" before "official or employee" in the first

sentence and before "authorized official" in the second sentence; substituted "department" for "commission" in each sentence; and made minor changes in punctuation and phraseology.

**1-303. Air instruction without license or certificate unlawful.** It is unlawful for a person to operate an air school or to give instructions in flying or ground subjects in this state unless that person, if an air school or aeronautics instructor in ground subjects, is the holder of an annual license issued by the department, or, if an aeronautics instructor in flying subjects, has an appropriate effective license, certificate, or permit issued by the United States government authorizing him to engage in the particular class of flight instruction in which he is engaged, which has been registered with the department and the registration with the department is in full force.

**History:** En. Sec. 11, Ch. 152, L. 1945; amd. Sec. 12, Ch. 348, L. 1974.

**Amendments**

The 1974 amendment substituted "de-

partment" for "commission" in three places; and made minor changes in punctuation and phraseology.

**1-304. Licensing of airports and other air navigation facilities.** All proposed airports, restricted landing areas, and other air navigation facilities shall be first licensed by the department before they are used or operated. A municipality or person acquiring property for the purpose of constructing or establishing an airport or restricted landing area shall, prior to that acquisition, apply to the department for a certificate of approval of the site selected and the general purpose for which the property is to be acquired, to ensure that the property and its use conform to minimum standards of safety and serve the public interest. It is unlawful for a municipality or an officer or employee of it, or for any person, to operate an airport, restricted landing area, or other air navigation facility for which an annual license has not been issued by the department.

**History:** En. Sec. 12, Ch. 152, L. 1945; amd. Sec. 13, Ch. 348, L. 1974.

**Amendments**

The 1974 amendment inserted "facili-

ties" after "air navigation" in the first sentence; substituted "department" for "commission" throughout the section; and made minor changes in phraseology.

**1-305. Hearings on applications for certificates and licenses.** When the department makes an order granting or denying a certificate of approval of an airport or a restricted landing area, or an original license to use or operate an airport, restricted landing area, or other air navigation facility, and the applicant or any interested municipality, within fifteen days after notice of the order has been sent to the applicant by registered mail, demands a public hearing, or when the department desires to hold a public hearing before making the order, a public hearing in relation to its action shall be held in the municipality applying for the certificate of approval or license, or in case the application was made by anyone other than a municipality, at the county seat of the county in which the pro-

posed airport, restricted landing area, or other air navigation facility is proposed to be situated. At the hearing parties in interest and other persons shall have an opportunity to be heard. Notice of the hearing shall be published by the department in a newspaper of general circulation in the county in which the hearing is to be held, at least twice, the first publication to be at least fifteen days prior to the date of hearing. After a proper and timely demand has been made the order shall be stayed until after the hearing, when the department may affirm, modify, or reverse it, or make a new order. If no hearing is demanded as provided in this section, the order becomes effective upon the expiration of the time permitted for making a demand. Where a certificate of approval of an airport or restricted landing area has been issued by the department, it may grant a license for operation and use, and no hearing may be demanded.

**History:** En. Sec. 13, Ch. 152, L. 1945; amd. Sec. 14, Ch. 348, L. 1974.

**Amendments**

The 1974 amendment substituted "de-

partment" for "commission" throughout the section; deleted "legal" before "newspaper" in the third sentence; and made minor changes in style, punctuation, and phraseology.

**1-306. Standards for issuing certificates of approval and licenses.** In determining whether to issue a certificate of approval or license for the use or operation of a proposed airport or restricted landing area, the department shall take into consideration its proposed location, size, and layout, the relationship of the proposed airport or restricted landing area to a comprehensive plan for state-wide and nation-wide development, whether there are safe areas available for expansion purposes, whether the adjoining area is free from obstructions based on a proper glide ratio, the nature of the terrain, the nature of the uses to which the proposed airport or restricted landing area will be put, and the possibilities for future development.

**History:** En. Sec. 14, Ch. 152, L. 1945; amd. Sec. 15, Ch. 348, L. 1974.

**Amendments**

The 1974 amendment substituted "de-

partment" for "commission"; and made minor changes in punctuation and phraseology.

**1-308. Revocation of certificate of approval and licenses.** The department may temporarily or permanently revoke any certificate of approval or license issued by it when it determines that an airport, restricted landing area, or other navigation facilities are not being maintained or used in accordance with the provisions of this title and the rules adopted under it.

**History:** En. Sec. 16, Ch. 152, L. 1945; amd. Sec. 16, Ch. 348, L. 1974.

**Amendments**

The 1974 amendment substituted "de-

partment" for "commission"; substituted "title" for "act"; and made changes in phraseology.

**1-310. Orders of department.** (1) Before the department refuses to issue a certificate of approval, issue a license, or renew a license for an airport, restricted landing area, or other air navigation facility, or refuses



to permit the registration of a license, certificate, or permit, or refuses to grant a license to an air school or to an aeronautics instructor in ground subjects, or before it issues an order requiring certain things to be done, or revoking a license or certificate, it shall set forth its reasons for its action and shall state the requirements to be met before the approval will be given, registration permitted, license granted or order modified or changed. An order made by the department under this title shall be served upon the interested persons by registered mail or in person. A person charged with the duty of enforcing this title may inspect and examine at reasonable hours any premises, buildings, or other structures where airports, restricted landing areas, air schools, flying clubs, or other air navigation facilities or aeronautical activities are operated or carried on.

(2) A person aggrieved by an order of the department, or by the granting or denial of a license, certificate, or registration may, within ten (10) days after receiving notice of the department's order or action, appeal from the order or action to the district court of the county in which the person resides or the county in which any property affected by the order or action is located. The appellant shall file with the clerk of the district court to which the appeal is taken a notice of appeal which shall state the substance of the order or action appealed from, the date of the order or action, and that the person appeals to the court from it. The appellant shall serve a copy of the notice of appeal upon the department. The order of filing and service is immaterial. The appeal shall be heard not less than ten days nor more than thirty days after the filing of the notice of appeal unless the judge, for sufficient cause resulting from press of business or other reason, is unable to hear the appeal within that time. In that event, the hearing may be deferred until it can be heard by the court. The appeal may be heard without formal pleadings.

**History:** En. Sec. 18, Ch. 152, L. 1945;  
amd. Sec. 17, Ch. 348, L. 1974.

ences to the department for references to the commission throughout the section; and made numerous changes in style, punctuation and phraseology.

#### **Amendments**

The 1974 amendment substituted refer-

**1-311. "Commercial air operator" defined.** Unless the context requires otherwise, in this chapter "commercial air operator" means any person owning, controlling, operating, or managing aircraft for any commercial purpose for compensation.

**History:** En. Sec. 1, Ch. 122, L. 1967;  
amd. Sec. 18, Ch. 348, L. 1974.

#### **Amendments**

The 1974 amendment made minor changes in phraseology.

### **1-312, 1-313. Repealed.**

#### **Repeal**

Sections 1-312 and 1-313 (Secs. 2, 3, Ch. 122, L. 1967), relating to definitions

of "aircraft" and "person," were repealed by Sec. 107, Ch. 348, Laws 1974.

**1-314. Commercial air operators to procure insurance.** The department shall require every commercial air operator to procure, and continue in effect as long as the commercial air operator continues to offer its



services for compensation, adequate protection against liability imposed by law upon a commercial air operator for the payment of damages for personal bodily injuries, including death resulting from those injuries, and property damage as a result of an accident.

**History:** En. Sec. 4, Ch. 122, L. 1967; partment" for "state aeronautics commission"; and made minor changes in phraseology.  
amd. Sec. 19, Ch. 348, L. 1974.

#### **Amendments**

The 1974 amendment substituted "de-

**1-315. Department to set amount of insurance.** The department shall, after a public hearing, set the amount of liability insurance, required by section 1-314, which is reasonably necessary to provide adequate compensation for damage incurred through an accident involving a commercial air operator.

**History:** En. Sec. 5, Ch. 122, L. 1967; **Amendments**  
amd. Sec. 20, Ch. 348, L. 1974.

The 1974 amendment substituted "department" for "commission."

**1-316. Submission of evidence of insurance to department.** (1) The protection required under section 1-314, covering each aircraft used or to be used in commercial operations for compensation, shall be evidenced by providing one of the following to the department:

(a) A copy of the policy of insurance, issued by a company authorized to write the insurance in the state;

(b) A bond of a surety company authorized to write surety bonds in the state; or

(c) Evidence of the qualification of the commercial air operator as a self-insurer as may be authorized by the department.

(2) With the consent of the department a copy of an insurance policy, certified by the company issuing it to be a true copy of the original policy, or a photostatic copy of the original policy, or an abstract of the provisions of the policy, or a certificate of insurance issued by the company issuing the policy, may be filed with the department instead of the original or a duplicate or counterpart of the policy.

(3) The department may accept policies of insurance written by unauthorized insurers, if the policies of insurance meet the rules adopted by the department.

**History:** En. Sec. 6, Ch. 122, L. 1967;  
amd. Sec. 21, Ch. 348, L. 1974.

#### **Amendments**

The 1974 amendment substituted "de-

partment" for "commission" in the caption and in subsection (1); added subsections (2) and (3); and made minor changes in style, punctuation and phraseology.

### **1-317. Repealed.**

#### **Repeal**

Section 1-317 (Sec. 7, Ch. 122, L. 1967), relating to the filing of insurance policy

copies in lieu of the originals, was repealed by Sec. 107, Ch. 348, Laws 1974.

**1-318. Continuation of insurance—notice to department upon cancellation.** The protection against liability shall be continued in effect as long as the commercial air operator continues to offer his services for

compensation. The policy of insurance or surety bond shall not be cancelable on less than thirty (30) days' written notice to the department, except in the event of cessation of operations as a commercial air operator.

History: En. Sec. 8, Ch. 122, L. 1967;  
amd. Sec. 22, Ch. 348, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "commission" throughout; and made a minor change in phraseology.

**1-319. Department to establish rules.** The department may establish rules necessary to enforce sections 1-314 through 1-321.

History: En. Sec. 9, Ch. 122, L. 1967;  
amd. Sec. 23, Ch. 348, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "commission"; and substituted "sections 1-314 through 1-321" for "this article."

#### Compiler's Notes

Sections 1-317 and 1-321, included in the above reference, were repealed by Sec. 107, Ch. 348, Laws 1974.

**1-320. Violations a misdemeanor.** A commercial air operator who knowingly refuses or fails to procure protection against liability, as required by section 1-314 is guilty of a misdemeanor, and each day during which that commercial air operator continues in default constitutes a separate offense.

History: En. Sec. 10, Ch. 122, L. 1967;  
amd. Sec. 24, Ch. 348, L. 1974.

six (6) months from the effective date of this article" after "section 1-314"; and made minor changes in phraseology.

#### Amendments

The 1974 amendment deleted "within

### 1-321. Repealed.

#### Repeal

Section 1-321 (Sec. 11, Ch. 122, L. 1967), relating to acceptance of insurance policies

written by unauthorized insurers if rules and regulations met, was repealed by Sec. 107, Ch. 348, Laws 1974.

**1-322. Operation of sections—exceptions.** (1) No air carrier may operate aircraft except in accordance with sections 1-322 through 1-324.

(2) Sections 1-322 through 1-324 do not apply to:

(a) common carriers of passengers or freight by aircraft which operate within this state under a certificate of public convenience and necessity issued by the federal government; or

(b) aircraft operators, who carry passengers for hire, who are commonly known as "taxi operators" or "charter operators," who operate on an occasional or contract basis, and who do not operate as common carriers between terminal points, including intermediate points, if any.

History: En. Sec. 1, Ch. 171, L. 1967;  
amd. Sec. 25, Ch. 348, L. 1974.

#### Amendments

The 1974 amendment rewrote this section. For prior version see parent volume.

**1-322.1. Definitions.** In sections 1-322 through 1-324, unless the context requires otherwise:

(1) The general definitions in section 1-102 apply.

(2) "Air carrier" means a person or corporation owning, controlling, operating, or managing aircraft as a scheduled common carrier of passengers or freight for compensation within this state.

(3) "Board" means the board of aeronautics provided for in section 82A-905.

History: En. 1-322.1 by Sec. 26, Ch. 348, L. 1974.

**1-323. Regulatory powers of board of aeronautics—rates—reports—rules.** (1) The board of aeronautics may:

(a) Supervise and regulate every air carrier in those matters affecting ticketing, flight reservations, passenger baggage, advertising, passenger convenience and comfort, and transportation of freight;

(b) After notice to all interested parties and the public, and after hearing, fix the rates, fares, charges, classifications, and rules of each carrier;

(c) Regulate the accounts of each carrier, and require the filing of annual and other reports and of other data by the carriers;

(d) By general order or otherwise, adopt rules applicable to all air carriers. The board, in the exercise of the jurisdiction conferred upon it, may make orders and adopt rules affecting air carriers, notwithstanding the provisions of any ordinance or permit of a town, city, city and county, or county and in case of conflict the order or rule of the board prevails.

(2) The board shall act in an advisory capacity to the department in matters pertaining to aeronautics.

History: En. Sec. 2, Ch. 171, L. 1967; amd. Sec. 27, Ch. 348, L. 1974.

nautics" for "commission," and deleting numerous provisions dealing with certificates of public convenience and now compiled in secs. 1-323.1 to 1-323.6. For prior version see parent volume.

#### Amendments

The 1974 amendment completely rewrote this section, substituting "board of aero-

**1-323.1. Certificates of public convenience and necessity — requirement—issuance.** (1) No air carrier may engage in an operation in this state without first obtaining from the board a certificate of public convenience and necessity authorizing the operation.

(2) An applicant shall submit his written verified application to the board. The application shall be in a form, contain the information, and be accompanied by proof of service upon all air carriers with which the proposed service is likely to compete and upon other interested parties as the board requires. Each application shall be accompanied by a fee of one hundred fifty dollars (\$150).

(3) In awarding certificates of public convenience and necessity, the board shall consider the business experience of the particular air carrier in the field of air operations, the financial stability of the carrier, the insurance coverage of the carrier, the type of aircraft which the carrier would employ, proposed routes and minimum schedules to be established, whether the carrier could economically give adequate service to the communities involved, the need for the service, and any other factors which may affect the public interest.

(4) The board may, after notice to the interested parties and the public, and after hearing, issue the certificate requested. The board may,



after like notice and hearing, refuse to issue the certificate. The board may, after like notice and hearing, issue the certificate for the partial exercise only of the privilege sought. The board may attach to the exercise of the rights granted by the certificate terms and conditions as, in its judgment, the public convenience and necessity require.

History: En. 1-323.1 by Sec. 28, Ch. 348,  
L. 1974.

**1-323.2. Certificates of public convenience and necessity—transfer and combination.** (1) The holder of a certificate of public convenience and necessity must apply to the board for permission to sell, mortgage, lease, assign, transfer, or otherwise encumber a certificate. A fee of one hundred fifty dollars (\$150) shall be paid to the department for filing each application to sell, mortgage, lease, assign, transfer, or otherwise encumber a certificate.

(2) The board may, after notice and hearing, approve the application or refuse to approve it, and may approve it under those terms and conditions which, in its judgment, the public convenience and necessity require.

(3) Without the express approval of the board, no certificate of public convenience and necessity issued to one air carrier may be combined, united, or consolidated with a certificate issued to or possessed by another carrier, so as to permit through service between any point served by one carrier and any point served by the other carrier.

History: En. 1-323.2 by Sec. 29, Ch. 348,  
L. 1974.

**1-323.3. Certificates of public convenience and necessity—suspension—amendment—revocation.** (1) The board may suspend and the department shall enforce the suspension of certificates of public convenience and necessity, issued by the board, upon a finding of an agency of the federal government that an air carrier is operating in violation of a federal safety law or regulation.

(2) For any other good cause, the board may, upon notice to the holder of a certificate and opportunity to be heard, suspend, revoke, alter, or amend a certificate.

History: En. 1-323.3 by Sec. 30, Ch. 348,  
L. 1974.

**1-323.4. Establishment of through and joint rates—discontinuance of service.** (1) An air carrier may, upon prior written approval from the board after notice to all interested parties and the public, and after hearing, establish through rates and joint rates, charges, and classifications between all points served by it under certificates or operative rights issued to or possessed by it.

(2) No air carrier may discontinue operations to a point without authority of the board, unless the operations are unprofitable. Unprofitable operations may be discontinued upon thirty (30) days' notice to the board, and to other persons the board may require, unless within the thirty (30)

day period the board, after hearing, finds that the operation is not unprofitable and orders its continuance.

History: En. 1-323.4 by Sec. 31, Ch. 348, L. 1974.

**1-323.5. Insurance.** The board may, upon its motion, or upon application of an interested party, and after hearing, require an air carrier to procure and maintain insurance in amounts and upon terms as the board may determine. The board may suspend the certificate of an air carrier for failure to comply with the insurance regulations established under this section.

History: En. 1-323.5 by Sec. 32, Ch. 348, L. 1974.

**1-323.6. Violations—enforcement—appeals and judicial determinations.**

(1) When a complaint has been filed with the board alleging that an aircraft is being operated without a certificate of public convenience and necessity, or when the board believes that sections 1-322 through 1-324 are being violated, the board shall investigate the operations and may, after a hearing, make its order requiring the operator of the aircraft to stop an operation in violation of this section. The department shall enforce compliance with the order by means of powers vested in it by law.

(2) The district court has jurisdiction to enforce, by proper decree, injunction, or order, the rates, classifications, rules, and orders made by the board. The proceeding shall be by equitable action in the name of the state, and shall be instituted by the attorney general or county attorney, when advised by the department that an air carrier is violating or refusing to comply with a rule, order, rate, or classification made by the board and applicable to that air carrier. The proceedings shall have precedence over all other business in the district courts, except criminal business.

(3) In an action the burden of proof rests upon the defendant, who must show by clear and satisfactory evidence that the rule, order, rate, or classification involved is unreasonable and unjust. If the court decides that the rule, order, rate, or classification is not unreasonable or unjust, and that in refusing compliance the air carrier is failing to fulfill a duty, debt, or obligation, the court shall decree a mandatory and permanent injunction compelling compliance with the rule, order, rate, or classification by the defendant, and its officers, agents, servants, and employees, and may grant other relief which may be considered just and proper. A violation of the decree makes the defendant and officer, agent, servant or employee of the defendant, who is in any manner instrumental in the violation, guilty of contempt, punishable by a fine not exceeding one thousand dollars (\$1000) for each offense, or by imprisonment of that person until he sufficiently purges himself. The decree remains in effect until the rule, order, rate, or classification is modified or vacated by the board.

(4) An air carrier may bring an action in the district court of the county where the principal office or place of business is situated, or in a county where a classification, rate, toll, charge, rule, or order of the board applies, against the board as defendant, to determine whether the classifica-

tion, rate, toll, charge, rule, or order made or established by the board is just and reasonable. In an action, hearing, or proceeding in any court, the classification, rate, toll, charge, rule, and order made and established by the board shall prima facie be considered just, reasonable, and proper.

(5) Appeals taken to the supreme court from the judgment of a district court under this section have precedence over all other business, except criminal business and original proceedings in that court, and shall be heard and determined as are appeals in civil actions.

(6) All costs and expenses incurred in the hearing, trial, or appeal of an action brought under this section shall be determined and assessed in a manner the court considers just and equitable.

History: En. 1-323.6 by Sec. 33, Ch. 348, L. 1974.

**1-324. Publication of notice.** Notice as required by sections 1-323 through 1-323.6 shall be given by publication once a week for three (3) successive weeks in a newspaper of general circulation in the county in which the hearing is to be held and by personal service by mailing to all interested parties. However, in the case of the hearings required by sections 1-323 and 1-323.4(1), if no written protest or written request that the hearing be held is received by the board within five (5) days after the date of the last publication of the notice, the board may, in its discretion, vacate the hearing and establish the rates, fares, charges, classifications, and rules of the air carrier without hearing. The notice required by this section shall state that the board may vacate the hearing unless a written protest or request that the hearing be held is received by the board as required by this section.

History: En. Sec. 3, Ch. 171, L. 1967; amd. Sec. 1, Ch. 203, L. 1969; amd. Sec. 34, Ch. 348, L. 1974.

fications and rules of air carriers may be vacated if no written protest or request is received.

The 1974 amendment inserted the references to secs. 1-323.6 and 1-323.4(1); substituted "board" for "commission" throughout; and made minor changes in style, punctuation and phraseology.

#### Amendments

The 1969 amendment authorized personal service by mail and provided that hearings on rates, fares, charges, classifica-

**1-325. Aircraft must be registered—situs for registration.** (1) Aircraft customarily kept in this state shall be registered with the department of community affairs, which may charge a fee therefor of not more than ten dollars (\$10). The registration shall be renewed annually on or before March 1 each year. This act shall not apply to:

(a) aircraft owned and operated by the federal government, the state or any political subdivision thereof;

(b) aircraft owned and held by an aircraft dealer solely for the purpose of resale;

(c) aircraft operated by an airline company and regularly scheduled for the primary purpose of carrying persons or property for hire in interstate or international transportation; or

(d) dismantled or otherwise nonflyable aircraft.

(2) An aircraft shall be registered as property within a particular county of the state. This county shall be the county of the owner's



principal residence, if the owner is a natural person, or the owner's principal place of doing business in the state, if the owner is not a natural person. However, if the owner declares by affidavit that the aircraft is customarily kept at a landing facility in another county within the state, he may register the aircraft as property within such other county. All aircraft shall be subject to all state, county and school district tax levies and all other levies designated for aircraft or airport related uses. Such aircraft shall not be liable for other city tax levies.

(3) Aircraft not registered in the state, but entering the state to engage in commercial operations, shall be registered prior to commencing operation.

**History:** En. 1-325 by Sec. 1, Ch. 542, L. 1975; amd. Sec. 1, Ch. 210, L. 1977.

#### Amendments

The 1977 amendment substituted "department of community affairs" for "department of intergovernmental relations"; changed the annual registration deadline from February 1 to March 1; inserted subdivision (1)(d); and added subsection (3).

#### Title of Act

An act requiring the registration of certain aircraft.

**1-326. Penalty for late registration, evasion, or false registration statement.** (1) When an aircraft required to be registered under the provisions of this act is not registered on or before March 1 of the current calendar year, a penalty fee of one hundred dollars (\$100) shall be added to the registration fee and collected. Registration of an aircraft in the name of the applicant for the year immediately preceding the year for which application for registration is made shall be prima facie evidence that the aircraft has been based in this state during the year for which application for registration is made.

(2) An application for registration shall be accompanied by a copy of the receipt for, or statement of personal property tax paid, signed by the treasurer of the county where the aircraft is registered or a statement of lien assignment against real property signed by the county assessor where the aircraft is registered. A person who pays personal property tax on his aircraft to any jurisdiction other than the county where the aircraft is required to be registered is liable for the tax in that county without credit for such other taxes paid. In addition to this civil liability, a person who attempts to establish the situs of his aircraft in any jurisdiction other than the county where the aircraft is required to be registered with intent to avoid payment of taxes to that county commits the offense of false swearing as defined in section 94-7-203.

(3) A person who operates an aircraft required to be registered in the state without having displayed upon such aircraft a certificate of registration issued by the department of community affairs for that aircraft, commits a misdemeanor.

**History:** En. 1-326 by Sec. 2, Ch. 542, L. 1975; amd. Sec. 2, Ch. 210, L. 1977.

#### Amendments

The 1977 amendment changed the registration deadline referred to in subsection (1) from February 1 to March 1; inserted "or statement of" in the first

sentence of subsection (2); substituted "signed" for "issued" before "by the treasurer" in the first sentence of subsection (2); added "or a statement of lien assignment against real property signed by the county assessor where the aircraft is registered" to the first sentence of subsection (2); substituted "displayed upon

such aircraft" for "in such aircraft" in subsection (3); and substituted "department of community affairs" for "department of intergovernmental relations" in subsection (3).

#### CHAPTER 4—STATE AIRPORTS

##### Section

##### 1-401. Acquisition and operation of state airports.

**1-401. Acquisition and operation of state airports.** (1) The department may, on behalf of and in the name of this state:

(a) acquire real or personal property by purchase, gift, devise, lease, condemnation proceedings, or otherwise for the purpose of establishing and constructing airports, restricted landing areas, and other air navigation facilities;

(b) acquire in like manner, own, control, establish, construct, enlarge, improve, maintain, equip, operate, regulate, and police airports, restricted landing areas, and other air navigation facilities either within or outside this state;

(c) prior to acquisition, make investigations, surveys, and plans;

(d) erect, install, construct, and maintain facilities at those airports for the servicing of aircraft and for the comfort and accommodation of air travelers; and

(e) dispose of any property, airport, restricted landing area, or any other air navigation facility by sale, lease, or otherwise in accordance with the laws of this state governing the disposition of other like property of the state.

(2) The department may not, however, acquire or take over an airport, restricted landing area, or other air navigation facility owned or controlled by a municipality of this state without the consent of the municipality. The department may erect, equip, operate, and maintain on an airport, buildings and equipment necessary and proper to establish, maintain, and conduct the airport and air navigation facilities connected with it.

(3) Where necessary, in order to provide unobstructed air space for the landing and taking off of aircraft utilizing airports and restricted landing areas acquired or operated under the provisions of this title, the department may acquire, in the manner provided for the acquisition of property for airport purposes, easements through or other interests in air space over land or water, interests in airport hazards outside the boundaries of the airports or restricted landing areas, and such other airport protection privileges as are necessary to ensure safe approaches to the landing areas of airports and restricted landing areas and the safe and efficient operation of them. The department may also acquire in the same manner the right or easement, for a term of years or perpetually, to place or maintain suitable marks for the daytime marking and suitable lights for the nighttime marking of airport hazards, including the right of ingress and egress to or from the airport hazards for the purpose of maintaining and repairing the lights and marks. This authority does not limit the right, power, or authority of the state or a municipality to zone property adjacent to an airport or restricted landing area pursuant to a law of this state.

(4) The department may engage in all those activities jointly with the United States, other states, and with municipalities or other agencies of this state.

(5) For the purpose of acquiring any property which it is authorized to acquire, the department may exercise the right of eminent domain, in the name of the state, in the manner provided by the laws of this state for the acquisition of real property for public purposes. The acquisition of property for any of those purposes is a public use.

(6) The department may:

(a) lease, for a term not exceeding 10 years, airports or other air navigation facilities or real property acquired or set apart for airport purposes to private parties, a municipal or state government, or the national government, or a department of either of them, for operation;

(b) lease or assign, for a term not exceeding 10 years, space, area, improvements, or equipment on those airports to private parties, a municipal or state government or the national government, or a department of either for operation or use consistent with the purposes of this title;

(c) sell any part of those airports, other air navigation facilities, or real property to a municipal or state government or to the United States or a department or instrumentality thereof, for aeronautical purposes or purposes incidental thereto; and

(d) confer the privilege of concessions for supplying goods, commodities, things, services, and facilities upon the premises of those airports. However, in so doing the public may not be deprived of its rightful, equal, and uniform use thereof.

(7) It may determine the charges or rental for the use of state airports, the charges for service or accommodations under its control, and the terms and conditions under which the properties may be used. However, the public may not be deprived of its rightful, equal, and uniform use of the property. Charges shall be reasonable and uniform for the same class of service and established with due regard to the property and improvements used and the expenses of operation to the state. The state has, and the department may enforce, agisters' liens as provided by law for repair, improvement, storage, or care of any personal property.

**History:** En. Sec. 19, Ch. 152, L. 1945; amd. Sec. 35, Ch. 348, L. 1974; amd. Sec. 1, Ch. 232, L. 1977.

#### **Amendments**

The 1974 amendment substituted "department" for "commission" in subsections (1) and (6); and made numerous changes in punctuation, style, and phraseology.

The 1977 amendment designated the former second and third sentences of subsection (1) as subsection (2); redesignated former subsections (2) through (6) as subsections (3) through (7); and made minor changes in phraseology, punctuation and style.

## **CHAPTER 5—MISCELLANEOUS**

### **Section**

1-501. Receipt and disbursement of moneys.

1-502. Governmental nature of aeronautical functions.

**1-501. Receipt and disbursement of moneys.** (1) All costs and expenses of administering this title, including the salaries of employees of the



department of community affairs engaged in functions pertaining to aeronautics, the expenses of members of the board of aeronautics, and all other disbursements necessary to carry out the purposes of this title, shall be paid out of the following revenues: All gifts and all legislative appropriations to the department for aeronautics; all moneys received from any branch or department of the federal government, or from other sources, for the purposes mentioned in this title or for the furtherance of aeronautics generally in this state. All such moneys shall be deposited in the state treasury to the credit of the department.

(2) There shall be deposited in the earmarked revenue fund to the credit of the department the proceeds of one cent (1¢) per gallon out of the amount per gallon of gasoline license tax imposed by the laws of this state upon purchases of gasoline used for the operation of aircraft. Moneys so deposited shall be spent by the department for the sole purpose of carrying out its functions pertaining to aeronautics.

(3) No part of the one cent (1¢) per gallon of gasoline license tax imposed by the laws of this state on gasoline purchased and used for the operation of airplanes or aircraft may be refunded.

**History:** En. Sec. 20, Ch. 152, L. 1945; amd. Sec. 1, Ch. 120, L. 1949; amd. Sec. 220, Ch. 147, L. 1963; amd. Sec. 36, Ch. 348, L. 1974; amd. Sec. 3, Ch. 213, L. 1975.

#### Amendments

The 1974 amendment substituted references to the aeronautics board or department for references to the commission; substituted "of the department of intergovernmental relations engaged in functions pertaining to aeronautics" at the beginning of subsection (1) for "and assistants provided for in section 1-203"; inserted the last sentence in subsection

(2); deleted a clause at the end of subsection (3) reading "under the provisions of section 84-1818, as amended, it being the intent of this section to reduce by one cent (1¢) per gallon of the amount of gasoline license tax which may be refunded on purchases of gasoline used in the operation of aircraft, and to leave otherwise unchanged the provisions of said section 84-1818"; and made changes in style and phraseology.

The 1975 amendment substituted "department of community affairs" for "department of intergovernmental relations" in subsection (1).

**1-502. Governmental nature of aeronautical functions.** The acquisition of lands for establishing airports or other air navigation facilities; the acquisition of airport protection privileges; the acquisition, establishment, construction, enlargement, improvement, maintenance, equipment, and operation of airports and other air navigation facilities, whether by the state separately or jointly with a municipality; the assistance of this state in that acquisition, establishment, construction, enlargement, improvement, maintenance, equipment, and operation; and the exercise of any other powers granted to the department are public and governmental functions exercised for a public purpose and as a matter of public necessity; and such lands and other property and privileges acquired and used by the state in the manner and for the purposes enumerated in this title are acquired and used for public and governmental purposes and as a matter of public necessity.

**History:** En. Sec. 21, Ch. 152, L. 1945; amd. Sec. 37, Ch. 348, L. 1974; amd. Sec. 2, Ch. 232, L. 1977; amd. Sec. 1, Ch. 234, L. 1977.

#### Compiler's Notes

This section was amended twice in 1977, once by Ch. 232 and once by Ch. 234. Since the amendments do not appear to

conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

#### Amendments

The 1974 amendment substituted "department" for "commission"; and made minor changes in style, punctuation and phraseology.

Chapter 232, Laws of 1977, deleted the subsection (1) designation at the beginning of the section; deleted subsection (2) which read: "No suit in tort may be brought or maintained against the state

or any municipality of the state, or their officers, agents, servants, or employees, on account of an act done in or about the construction, maintenance, enlargement, operation, superintendence, or management of an airport or other air navigation facility"; and made minor changes in phraseology, punctuation and style.

Chapter 234, Laws of 1977, deleted the subsection (1) designation at the beginning of the section; deleted subsection (2); and made minor changes in punctuation.

### 1-504. Repealed.

#### Repeal

Section 1-504 (Sec. 24, Ch. 152, L. 1945), relating to the repeal of other acts in

conflict, and to the scope of the act, was repealed by Sec. 107, Ch. 348, Laws 1974.

## CHAPTER 7—REGULATION OF DANGEROUS OBSTRUCTIONS NEAR AIRPORTS—AIRPORT ZONING ACT

### Section

- 1-701. Purpose.
- 1-702. Regulation of building heights.
- 1-704. Duty to acquire permit.
- 1-710. Definitions.
- 1-724. Legislative finding.
- 1-725. Definitions.
- 1-726. Designation of airport influence areas.
- 1-727. Temporary effect of designation.
- 1-728. Development of criteria by a local government.
- 1-729. Adoption of rules.
- 1-730. Public hearing on rules.
- 1-731. State lands.
- 1-732. Amendment of criteria—redesignation of influence areas.
- 1-733. Variance.
- 1-734. Permit system.
- 1-735. Conditions on permit or variance.
- 1-736. Board of adjustment.
- 1-737. Rules relative to zoning ordinances.
- 1-738. Rules to be reasonable—prior nonconforming uses.
- 1-739. Penalty—court action.

**1-701. Purpose.** For the purpose of ensuring safety from death or injury for aeronauts and passengers, to protect the property of those engaged in aeronautics, and to encourage and promote air travel and transportation of mail, passengers, express, and freight by air, it is considered necessary to eliminate dangerous obstructions of air space in the vicinity of airports or landing fields which may now be or which may hereafter be acquired, owned, operated, controlled, or maintained by the United States, the state of Montana or any county or municipality thereof. In order to promote the public order, health, and safety by providing unobstructed air space for the safe descent, landing, ascent, and operation of aircraft utilizing public airports in the state of Montana, the height of buildings and other structures in the vicinity of the airports and landing fields in the state of Montana owned, leased, operated, maintained, or con-

trolled by any of those public authorities shall be regulated and restricted as hereafter provided.

History: En. Sec. 1, Ch. 12, L. 1939;      Amendments  
amd. Sec. 3, Ch. 232, L. 1977.

The 1977 amendment made minor changes in phraseology and punctuation.

**1-702. Regulation of building heights.** (1) The height of buildings and other structures shall be regulated for the purposes set forth in 1-701, considering among other things:

(a) requirements and facilities necessary to secure the safe descent, landing, ascent, and operation of aircraft utilizing the public airports and landing fields in the state of Montana;

(b) hazards from the obstruction of air space and the relation of the height of buildings and other structures in the vicinity of such airports and landing fields to such hazards;

(c) the area within which buildings and other structures may dangerously obstruct air space in the vicinity of public airports and landing fields and the height of buildings or other structures within such area which is consistent with the safe use of such airports and landing fields; and

(d) the maintenance and use of either obstruction markers or lights, or both, upon buildings and other structures within such area as safety devices.

(2) The height of buildings and other structures is regulated and restricted within a distance of 2 miles from any public airport or landing field, measured at a right angle from any side or in a radial line from any corner of the established boundary line thereof, in any and all directions, as follows:

(a) The trapezoidal portion of the total 2-mile zone area, 500 feet in width at the boundary of the field or airport and broadening to a width of 2,500 feet 2 miles distant, the center line of which is a continuation of the center line of each runway at and upon such public airports and landing fields, known as the approach zone, may have no building or other structure or natural feature or object of any kind therein, the height of which is more than one-twentieth its distance from the nearest boundary of the airport or landing field.

(b) The remaining portion of the 2-mile zone area surrounding such public airports and landing fields, lying between the approach zones and known as turning zones, may have no building or other structure or natural feature or object of any kind therein, the height of which is more than one-seventh its distance from the nearest boundary of the airport or landing field.

(3) In measuring distances and heights to determine the zone standard, measurements shall be taken from the nearest side of the building or structure or other object to the nearest side of the airport or landing field. In the event of airports having boundaries not regular, the nearest established perimeter of such port and field shall be used, as distinguished from the actual boundary.



**History:** En. Sec. 2, Ch. 12, L. 1939; amd. Sec. 4, Ch. 232, L. 1977.

#### Amendments

The 1977 amendment inserted the subsection (1) designation at the beginning of the section; inserted "The height of buildings and other structures shall be regulated for" at the beginning of subsection (1); substituted "1-701" for "section 1-707" near the end of the introductory clause of subsection (1); combined former subdivisions (b) and (c) into sub-

division (1)(b); combined former subdivisions (d) and (e) into subdivision (1)(c); redesignated former subdivision (f) as subdivision (1)(d); inserted the subsection (2) designation; redesignated former subdivision (1) as subdivision (2)(a); substituted "may" for "shall" in the middle of subdivision (2)(a) after "known as the approach zone"; redesignated former subdivision (2) as subdivision (2)(b); inserted the subsection (3) designation; and made minor changes in phraseology, punctuation and style.

**1-704. Duty to acquire permit.** (1) Each person, firm, or corporation in this state proposing to erect, establish, or maintain any building or other structure that would exceed the height limit established by law or to grow any natural object that would exceed such limit when grown, whenever the proposed erection or growth is within 2 miles of a public airport or landing field, shall apply to the proper officer of the United States or the state of Montana or any county or municipality thereof, whichever of those bodies has control of the airport or landing field affecting the area, for a permit to erect, establish, or maintain the structure, building, or object proposed.

(2) No permit may be granted unless the specifications of the building or other structure or object reveal that the total height does not or will not exceed the height limits fixed by law for the zone in which the same is to be established.

(3) No permit may be issued in violation of this section, and any permit which is issued in violation of this section is void.

**History:** En. Sec. 4, Ch. 12, L. 1939; amd. Sec. 5, Ch. 232, L. 1977.

#### Amendments

The 1977 amendment inserted the subsection designations; deleted "to proceed to erect, establish or maintain such structure, or plant said natural object, without first making application" in the middle of

subsection (1) before "whenever the proposed erection or growth"; substituted "is void" for "shall be ineffectual in law or equity, and shall be and remain a nullity so far as this act is concerned, and enforcement remedies hereunder" at the end of subsection (3); and made minor changes in phraseology and punctuation.

**1-710. Definitions.** Unless the context requires otherwise, in sections 1-710 through 1-723:

(1) The definitions in section 1-102 apply.

(2) "Airport hazard area" means any area of land or water upon which an airport hazard might be established if not prevented as provided in this title.

(3) "Structure" means any object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks, and overhead transmission lines.

(4) "Tree" means any object of natural growth.

**History:** En. Sec. 1, Ch. 287, L. 1947; amd. Sec. 38, Ch. 348, L. 1974.

#### Amendments

The 1974 amendment inserted subdivi-

sion (1); deleted the definitions of "airport," "airport hazard," "political subdivision," and "person"; and made changes in style and phraseology. For prior version see parent volume.

**1-724. Legislative finding.** It is hereby found that tall trees and structures and certain types of development located in the vicinity of airports endanger the lives and property of users of the airport and of occupants of land in its vicinity. It is also found that the location of tall trees and structures and certain types of development near airports reduce the area available for landing, taking off, and maneuvering aircraft, and increase the likelihood of legal action against a local government for noise nuisance, thus destroying the utility of the airports and the public investment in them. It is therefore the purpose of this act to promote the public health, safety, and general welfare by the development of compatible noise, height, and land use regulations.

**History:** En. 1-724 by Sec. 1, Ch. 551,  
L. 1977.

to adopt noise, height, and land use regulations for airport influence areas and to identify airport influence areas and establish criteria for the regulation of noise, height, and land use within these areas.

**Title of Act**

An act requiring local governing bodies

**1-725. Definitions.** (1) The definitions in 1-102 apply to this act.

(2) In this act the following definitions also apply:

(a) "Airport influence area" means all land in the proximity of an airport, the use of which may be affected by the airport's existence.

(b) "Airport" means, for the purpose of this act, only those airports included on the National Airport System Plan.

(c) "Local government" means any county or incorporated city or town having an airport influence area partially or entirely within its jurisdictional limits.

**History:** En. 1-725 by Sec. 2, Ch. 551,  
L. 1977.

**1-726. Designation of airport influence areas.** (1) A local government with an airport shall designate an airport influence area around the airport within 3 years from the effective date of this act. The designation shall be based on federal aviation administration rules and guidelines. However, no airport influence area may extend more than 10,000 feet out from the thresholds of the primary instrument approach runway or exceed 1 mile in width on each side of the primary instrument approach runway and its extended centerline. A public hearing shall be held by the local government following the procedure prescribed in 1-730.

(2) A map of the designation shall be filed with the county clerk and recorder of the affected counties and the city clerk of the affected cities and towns.

**History:** En. 1-726 by Sec. 3, Ch. 551,  
L. 1977.

**1-727. Temporary effect of designation.** Upon the designation of an airport influence area, the use of land within the airport influence area shall be restricted as to height consistent with part 77, federal aeronautics regulations, until rules are adopted pursuant to this act. This restriction does not affect nonconforming uses and areas already zoned on July 1, 1977,

and may not be imposed for a period of more than 1 year. After the designation of an airport influence area, no person may recover from a local government damages caused by noise and vibrations from normal and anticipated normal airport operations.

**History:** En. 1-727 by Sec. 4, Ch. 551,  
L. 1977.

**1-728. Development of criteria by a local government.** (1) The local government shall devise criteria and guidelines for regulation of the airport influence area.

(2) The criteria and guidelines for noise regulations shall be designed to promote the public health, safety, and general welfare and the criteria and guidelines for height and land use regulations shall be designed solely to promote the public safety. The criteria and guidelines shall, at the minimum, give reasonable consideration to, among other things:

(a) the safety of airport users and persons and property in the vicinity of the airport;

(b) the character of the flying operations conducted or expected to be conducted at the airport;

(c) the magnitude and duration of noise produced by aircraft and the number of aircraft flybys;

(d) the nature of the terrain;

(e) the future development of the airport;

(f) the views and mandates of the federal agency charged with the fostering of civil aeronautics as to the aerial surfaces necessary for safe flying operations.

**History:** En. 1-728 by Sec. 5, Ch. 551,  
L. 1977.

**1-729. Adoption of rules.** Within 1 year of the designation of an airport influence area, each local government affected shall adopt and provide for the administration of rules restricting the height to which structures may be erected and trees allowed to grow within the airport influence area.

**History:** En. 1-729 by Sec. 6, Ch. 551,  
L. 1977.

**1-730. Public hearing on rules.** Before a local government adopts or amends rules governing the airport influence area, it must hold a public hearing thereon. Unless otherwise specifically provided, when notice of a hearing or other official act is required by this title, the following shall apply:

(1) The notice shall be published two times with at least 7 days separating each publication. The first publication shall be no more than 21 days prior to the action and the last no less than 3 days prior to the action.

(2) The published notice shall contain:

(a) the date, time, and place at which the hearing or other action will occur;



(b) a brief statement of the action to be taken.

History: En. 1-730 by Sec. 7, Ch. 551,  
L. 1977.

**1-731. State lands.** When an airport influence area lies partially or entirely on state-owned lands, the department of state lands shall administer the affected lands in conformance with the criteria and guidelines prescribed by the local governing body.

History: En. 1-731 by Sec. 8, Ch. 551,  
L. 1977.

**1-732. Amendment of criteria—redesignation of influence areas.** (1) When circumstance so requires, the local government may amend the criteria and guidelines.

(2) The local government may redefine the boundaries of the influence area of an airport whenever an amendment to the criteria and guidelines so requires or whenever the airport site boundaries are altered.

History: En. 1-732 by Sec. 9, Ch. 551,  
L. 1977.

**1-733. Variance.** (1) Any person desiring to erect or increase the height of a structure, permit the growth of a tree, or use his property in violation of the rules adopted pursuant to this act may apply to board of airport hazard adjustment for a variance from the rules.

(2) A variance shall be granted where a literal application or enforcement of the rules would result in substantial practical difficulty or unnecessary hardship and where the variance would not be contrary to the public interest.

(3) A variance shall be granted for a nonconforming use where there is no immediate hazard to safe flying operations or persons and property in the vicinity of the airport and where the noise or vibrations from normal and anticipated normal operations of the airport would not be likely to cause structural damage.

(4) Within an airport influence area a person who obtains a variance for building a structure which is a nonconforming use under rules adopted pursuant to this act or a person who takes or buys property subject to such a variance is on notice that the airport existed before the variance was granted and that normal and anticipated normal operations of the airport will result in noise and vibrations being projected over the property. Furthermore, a person using a structure built under a variance may not collect damages from a local government for interference with the enjoyment of that structure caused by noise and vibrations from normal and anticipated normal airport operations.

History: En. 1-733 by Sec. 10, Ch. 551,  
L. 1977.

**1-734. Permit system.** (1) The rules adopted pursuant to this act shall provide for a permit system for erecting new structures, changing uses of land or structures, and substantially altering, repairing, or replacing existing structures within the airport influence area.

(2) No material change may be made in the use of land and no structure or tree may be erected, altered, planted, or otherwise established in an airport influence area unless a permit for the use has been granted.

(3) No permit may be granted which would allow the establishment of an airport hazard or that would allow a nonconforming use, structure, or tree to become a greater hazard to air navigation than it was on the effective date of the designation of the airport influence area or any subsequent revisions to it or than it was prior to the application for a permit.

**History:** En. 1-734 by Sec. 11, Ch. 551,  
L. 1977.

**1-735. Conditions on permit or variance.** Any permit or variance granted pursuant to this act may require the owner of the structure or tree in question to permit the local government, at its expense, to install, operate, and maintain the lights and markers necessary to warn pilots of the presence of an airport hazard.

**History:** En. 1-735 by Sec. 12, Ch. 551,  
L. 1977.

**1-736. Board of adjustment.** (1) All rules adopted pursuant to this act shall provide for a board of airport hazard adjustment consisting of five members to be appointed for terms and in the manner provided in 11-2707.

(2) All of the provisions of 11-2707 relating to appeals and judicial review are applicable to grievances relating to rules, variances, or permits.

(3) Where a local government has appointed a board of adjustment under the provisions of 11-2707 or 16-4706, the local government may designate the members of that board as the board of airport hazard adjustment required by this act in which case the terms of such members for purposes of this act are concurrent with their terms as members of the board of adjustment.

**History:** En. 1-736 by Sec. 13, Ch. 551,  
L. 1977.

**1-737. Rules relative to zoning ordinances.** (1) If a local government has adopted a zoning ordinance, any rules adopted under this act may be made a part of the zoning ordinance and may be administered and enforced in connection with it. However, the zoning ordinance may not limit the effectiveness or scope of the rules adopted pursuant to this act.

(2) Where a conflict exists between the rules adopted pursuant to this act and any zoning ordinances or resolutions applicable to the same area, the more stringent limitation or requirement shall prevail.

**History:** En. 1-737 by Sec. 14, Ch. 551,  
L. 1977.

**1-738. Rules to be reasonable—prior nonconforming uses.** All rules adopted under this act shall be reasonable and may not require the removal or alteration of any structure or tree lawfully in existence when the rules become effective. Such uses are to be treated as prior nonconforming uses, which may continue but rules may prohibit their expansion or their recon-

struction or replacement following destruction or substantial damage. Rules may further require that trees in place at the time the rules take effect be maintained by the local government, at its expense, at heights attained at that time. Land in existing residential subdivisions or platted for residential subdivision at the time rules are adopted may continue to be used for residential purposes.

History: En. 1-738 by Sec. 15, Ch. 551, L. 1977.

**1-739. Penalty—court action.** (1) Any person who violates any provision of this act or any rules adopted pursuant to it is guilty of a misdemeanor and punishable by a fine not to exceed \$500, imprisonment in a county jail for a period not to exceed 6 months, or both. Each day a violation continues to exist constitutes a separate offense.

(2) A local governing body may institute in any court of competent jurisdiction an action to prevent, restrain, correct, or abate any violation of this act or the rules adopted under it.

History: En. 1-739 by Sec. 16, Ch. 551, L. 1977.

#### Severability Clause

Section 17 of Ch. 551, Laws 1977 read "If a part of this act is invalid, all valid

parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

## CHAPTER 8—ESTABLISHMENT OF AIRPORTS BY COUNTIES AND CITIES—MUNICIPAL AIRPORTS ACT

### Section

1-804. Tax levy for establishment and operation of airports.

1-805.1. Validation of previous contracts and tax levies—1971 act.

1-807. Department of highways may assist municipalities in constructing roads to airports.

1-808. Definitions.

1-818. Federal and state aid.

1-821. Joint operations.

### 1-801. (5668.25) Counties, cities and towns may acquire land, etc.

#### Cross-References

Municipal and regional airport authorities, secs. 1-901 to 1-927.

#### Clear Zone for Approach

County did not demonstrate the necessity for acquiring a fee simple title to clear a path for approach to and exit for a runway, but it was sufficient that the county have an easement to remove obstructions and prevent future obstructions to safe flight. *Silver Bow County v. Hafer*, — M —, 532 P 2d 691.

#### Debt Limit

City-county airport commission which

borrowed \$200,000.00 from the aeronautics commission without consent of electorate and which was obligated to repay a total sum of \$238,500.00 over a ten-year period had incurred a debt upon which an amount over \$10,000.00 was due each year and had violated Art. XII of the 1889 Constitution; resolution by airport commission which approved the loan and which obligated the county to repay the aeronautics commission only \$10,000.00 did not bring the debt within the constitution since the commission was itself obligated and was an agent of the county. *Burlington Northern, Inc. v. Richland County*, — M —, 512 P 2d 707.

**1-804. (5668.38) Tax levy for establishment and operation of airports.** For the purpose of establishing, constructing, equipping, maintaining and operating airports and landing fields under the provisions of this act the



county commissioners or the city or town council may each year assess and levy in addition to the annual levy for general administrative purposes or the all-purpose levy authorized by sections 84-4701.1 and 84-4701.2, a tax of not to exceed two (2) mills on the dollar of taxable value of the property of said county, city or town. In the event of a jointly established airport or landing field, the county commissioners and the council or councils involved shall determine in advance the levy necessary for such purposes and the proportion each political subdivision joining in the venture shall pay, provided that no property within any political subdivision shall be subject to a tax pursuant to this section at an annual rate in excess of two (2) mills. Provided, that if it be found that the levy hereby authorized will be insufficient for the purposes herein enumerated, the commissioners and councils acting are hereby authorized and empowered to contract an indebtedness on behalf of such county, city or town, as the case may be, upon the credit thereof by borrowing money or issuing bonds for such purposes, provided that no money may be borrowed and no bonds may be issued for such purpose until the proposition has been submitted to the qualified electors, and a majority vote to be cast therefor, except that for the purpose of establishing a reserve fund to resurface, overlay, or improve existing runways, taxiways and ramps, said governing bodies may set up annual reserve funds in their annual budget, provided said reserve is approved by the governing bodies during the normal budgeting procedure. Provided further that the necessity to resurface or improve said runways by overlays or similar methods every so many years is based upon competent engineering estimates, and provided that said funds are expended at least within each ten (10) year period. Said fund shall not exceed at any time a competent engineering estimate of the cost of resurfacing or overlaying the existing runways, taxiways and ramps, of any one airport for each said fund. The governing body of said airport, if in its judgment deems it advantageous, may invest the fund in any interest-bearing deposits in a state or national bank insured by the F.D.I.C. or obligations of the United States of America, either short-term or long-term. Interest earned from such investments shall be credited to the operations and maintenance budget of said airport governing body. The above provisions, notwithstanding other budget control measures, and due to the uniqueness of the subject matter, are hereby declared necessary in the interests of the public health and safety.

**History:** En. Sec. 4, Ch. 108, L. 1929; amd. Sec. 4, Ch. 54, L. 1941; amd. Sec. 1, Ch. 54, L. 1945; amd. Sec. 1, Ch. 122, L. 1969; amd. Sec. 16, Ch. 158, L. 1971; amd. Sec. 3, Ch. 501, L. 1973.

#### **Amendments**

The 1969 amendment added the provisions authorizing governing bodies of airports to set up annual reserve funds in their annual budget to resurface, overlay or improve existing runways, taxiways and ramps.

The 1971 amendment substituted "qualified electors" for "taxpayers affected thereby" in the proviso relating to bond elections.

The 1973 amendment inserted "or the all-purpose levy authorized by sections 84-4701.1 and 84-4701.2" in the first sentence; substituted the proviso at the end of the second sentence for "based upon the benefits it is determined each shall derive from the project"; and made a minor change in phraseology.

#### **Repealing Clause**

Section 2 of Ch. 122, Laws 1969 repealed all acts and parts of acts in conflict therewith.

#### **Debt Limit**

Board of county commissioners which overtaxed taxpayers in one year in order

to provide a fund out of which expenses for capital improvements and remodeling of airport, which expenses exceeded \$21,000, clearly violated Art. XIII, § 5, 1889 Montana Constitution by incurring a liability for over \$10,000 without the approval of a majority of the electors of the county; county was not able to argue that "no indebtedness or liability" had

been created because the money was already on hand. Extraordinarily high levy created a "reserve fund" to be used for capital improvements which is not allowable due to restriction in this section of reserve funds to improvement of surfaces of runways or ramps. Burlington Northern Inc. v. Flathead County, — M —, 512 P 2d 710.

### 1-805. Repealed.

#### Repeal

Section 1-805 (Sec. 5, Ch. 108, L. 1929; Sec. 5, Ch. 54, L. 1941), relating to validation of previous contracts and tax levies

by local units for municipal airport purposes, was repealed by Sec. 107, Ch. 348, Laws 1974.

**1-805.1. Validation of previous contracts and tax levies—1971 act.** All levies and expenditures heretofore made and engagements entered into by counties, cities, or towns for the purposes contemplated by chapter 8, Title 1, R.C.M. 1947, as amended, and all elections held in counties, cities or towns for the purpose of creating indebtedness for such purposes, wherein a majority of the vote cast was in favor of such indebtedness, whether such counties, cities and towns were acting individually or jointly, under the authority of this act, are hereby validated and declared legally created, entered into and made, and all evidence of such indebtedness is declared to be a legal obligation of the county, city or town wherein such a majority vote has been cast in favor of such indebtedness.

**History:** En. Sec. 1, Ch. 278, L. 1971.

#### Title of Act

An act validating and declaring legal all levies and expenditures heretofore made and engagements entered into by counties, cities or towns for the purposes of the Municipal Airport Act and all elections held in counties, cities or towns for the purpose of creating indebtedness for such

purposes wherein a majority of the vote cast was in favor of such indebtedness; and providing for an effective date.

#### Effective Date

Section 2 of Ch. 278, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 10, 1971.

**1-807. Department of highways may assist municipalities in constructing roads to airports.** The department of highways may, upon written application of the governing body of a municipality, assist the municipality in the location, establishment, construction, reconstruction, maintenance, and improvement of highways and roads to and from municipal airports and field development of them. The department of highways shall lend its equipment, machinery, technical services and supervision to the municipality, under agreements made with each municipality.

**History:** En. Sec. 1, Ch. 120, L. 1939; amd. Sec. 39, Ch. 348, L. 1974.

#### Amendments

The 1974 amendment substituted refer-

ences to the department of highways for references to the highway commission throughout; and made minor changes in punctuation and phraseology.

**1-808. Definitions.** Unless the context requires otherwise, in sections 1-808 through 1-828 the definitions in section 1-102 apply.



History: En. Sec. 1, Ch. 288, L. 1947;  
amd. Sec. 40, Ch. 348, L. 1974.

#### Amendments

The 1974 amendment completely re-wrote this section. For prior version see parent volume.

### 1-809. General powers of municipalities in the establishment, etc.

#### Debt Limit

City-county airport commission which borrowed \$200,000.00 from the aeronautics commission without consent of electorate and which was obligated to repay a total sum of \$238,500.00 over a ten-year period had incurred a debt upon which an amount over \$10,000.00 was due each year and had violated Art. XII of the 1889 Consti-

tution; resolution by airport commission which approved the loan and which obligated the county to repay the aeronautics commission only \$10,000.00 did not bring the debt within the constitution since the commission was itself obligated and was an agent of the county. *Burlington Northern, Inc. v. Richland County*, — M —, 512 P 2d 707.

### 1-817. Application of airport revenues and sale proceeds.

#### Allocation of Costs

City has general budgetary authority in financing construction of city shop complex and has implied power to allocate

proportionate share of costs among various city departments using the facility. *Greener v. City of Great Falls*, 157 M 376, 485 P 2d 932.

**1-818. Federal and state aid.** (1) A municipality may accept, receive, receipt for, disburse, and spend federal and state moneys and other moneys, public or private, made available by grant or loan or both to accomplish any of the purposes of sections 1-808 through 1-828. All federal moneys accepted under this section shall be accepted and spent by the municipality upon terms and conditions prescribed by the United States and consistent with state law. All state moneys accepted under this section shall be accepted and spent by the municipality upon terms and conditions prescribed by the state. Unless otherwise prescribed by the agency from which the moneys were received, the chief financial officer of the municipality shall, on its behalf deposit and keep all moneys received pursuant to this section in separate funds designated according to the purposes for which the moneys were made available, in trust for those purposes.

(2) No application may be made by a municipality for federal aid, as provided in this section, unless the "project application," as defined in the Federal Airport Act of 1946 and regulations of the administrator of civil aeronautics, are first approved by the department.

(3) A municipality may, with the approval and consent of the department, designate the department as its agent to accept, receive, receipt for, and disburse federal and state moneys, and other moneys, public or private, made available by grant or loan or both to accomplish any of the purposes of sections 1-808 through 1-828. A municipality may, with the consent of the department, designate the department as its agent in contracting for and supervising the planning, acquisition, development, construction, improvement, or equipment of an airport or other air navigation facility. All contracts made, let, or awarded by the department acting as agent of a municipality under this section, shall be made, let, or awarded pursuant to the laws governing the making of contracts by



or on behalf of the state. The municipality may enter into an agreement with the department, providing for payment to the department for services rendered as agent and prescribing the terms and conditions of the agency, in accordance with terms and conditions prescribed by the United States, if federal money is involved, and in accordance with applicable state law. All federal moneys accepted under this section by the department shall be accepted and transferred or spent by the department upon terms and conditions prescribed by the United States. All moneys received by the department under this subsection shall be deposited in the state treasury, and unless otherwise prescribed by the agency from which the moneys were received, shall be kept in separate funds designated according to the purposes for which the moneys were made available, and held by the state in trust for those purposes.

**History:** En. Sec. 11, Ch. 288, L. 1947; amd. Sec. 41, Ch. 348, L. 1974.

#### Amendments

The 1974 amendment substituted "sections 1-808 through 1-828" in subsections

(1) and (3) for "this act"; substituted references to the department for references to the aeronautics commission throughout subsection (3); and made numerous changes in style, punctuation and phraseology.

**1-821. Joint operations.** (a) and (b) \* \* \* [Same as parent volume.]

(c) Joint board. Public agencies acting jointly pursuant to this section shall create a joint board which shall consist of members appointed by the governing body of each participating public agency. Per diem and mileage of such joint board may be set by resolution of the board of county commissioners. The number to be appointed and their term shall be provided for in the joint agreement. Each such joint board shall organize, select officers for terms to be fixed by the agreement, and adopt and amend from time to time rules for its own procedure. The joint board shall have power to plan, acquire, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate, protect and police any airport or air navigation facility or airport hazard to be jointly acquired, controlled and operated, and such board may exercise on behalf of its constituent public agencies all the powers of each with respect to such airport, air navigation facility or airport hazard, subject to the limitations of subsection (d) of this section.

(d) and (e) \* \* \* [Same as parent volume.]

**History:** En. Sec. 14, Ch. 288, L. 1947; amd. Sec. 1, Ch. 10, L. 1975.

#### Amendments

The 1975 amendment inserted the sec-

ond sentence of subsection (c); and substituted "and their term" for "their term and compensation, if any" in the third sentence of subsection (c).

**1-829 to 1-832. Repealed.**

#### Repeal

Sections 1-829 to 1-832 (Secs. 1 to 4, Ch. 281, L. 1969), relating to authorizing

passenger service charges against passenger air carriers, were repealed by Sec. 10, Ch. 232, Laws 1977.

## CHAPTER 9—MUNICIPAL AND REGIONAL AIRPORT AUTHORITIES

## Section

- 1-901. Definitions.
- 1-902. Department may exercise powers of airport authority—exceptions.
- 1-903. Department control of airport operation and income.
- 1-904. Creation of municipal airport authority.
- 1-905. Creation of regional airport authority.
- 1-906. Sinking funds for repair, maintenance and capital outlays.
- 1-908. Commissioners—compensation—meetings—officers.
- 1-909. General powers of an authority.
- 1-910. Eminent domain.
- 1-911. Disposal of airport property.
- 1-912. Bonds and other obligations.
- 1-913. Operation and use privileges.
- 1-914. Regulations.
- 1-915. Federal and state aid.
- 1-916. Tax levy may be certified by airport authority or municipality.
- 1-917. County tax levy for airport purposes.
- 1-918. Joint exercise of powers.
- 1-919. Public purpose.
- 1-920. Airport property and income exempt from taxation.
- 1-921. Municipal co-operation.
- 1-922. Out-of-state airport jurisdiction authorized—reciprocity with adjoining state and governmental agencies.
- 1-923. Supplemental authority.
- 1-924. Savings clause—airport zoning.
- 1-925. Short title.
- 1-927. Severability clause.

1-901. Definitions. Unless the context requires otherwise, in this chapter:

- (1) The definitions in section 1-102 apply.
- (2) "Municipal airport authority" or "municipal authority" means a municipal airport authority created under section 1-904.
- (3) "Regional airport authority" or "regional authority" means a regional airport authority created under section 1-905.
- (4) "Airport authority" or "authority" means a regional airport authority or municipal airport authority created under this chapter, and the governing body of a municipality which has determined to exercise the powers of a municipal airport authority under section 1-904.
- (5) "Governing body" means bodies and boards by whatever names they are known, having charge of finances and management of a municipality.
- (6) "Bonds" means bonds, notes, interim certificates, debentures, or similar obligations issued by an authority under this chapter.
- (7) "Real property" means lands, structures, buildings, and interests in land, including lands under water and riparian rights, and all things and rights usually included within the term real property, including not only fee simple absolute but also all lesser interests, such as easements, rights of way, uses, leases, licenses, and all other incorporeal hereditaments and every estate, interest, or right, legal or equitable, pertaining to real property.

**History:** En. 1-901 by Sec. 1, Ch. 433, L. 1971; amd. Sec. 42, Ch. 348, L. 1974.

#### Title of Act

An act to establish municipal and regional airport authorities; to provide for a tax levy for operation thereof; to provide for airport commissioners; to provide for the general power of an airport authority; to provide powers of eminent domain for issuance of bonds, and for the establishment of operational uses privileges; to provide for rules and regulations in connection with an airport authority; to provide for acceptance of federal aid for airports; to provide for joint opera-

tions of airport facilities and to provide for municipal co-operation in regard to airport operation. It is the intent of the legislative assembly that all sections of this bill be codified in Title 1, chapter 9, R. C. M. 1947.

#### Amendments

The 1974 amendment inserted present subdivision (1) and deleted definitions of municipality, clerk, airport, air navigation facility, airport hazard, person and project; and made minor changes in style, punctuation and phraseology in the remaining definitions.

**1-902. Department may exercise powers of airport authority—exceptions.** The department shall have all powers of an airport authority, except powers to certify or levy taxes or issue bonds, for constructing and operating public airports or landing fields near international border ports of entry, and near state or national parks or near or in recreational areas as the department may determine to be in the public interest.

**History:** En. 1-902 by Sec. 2, Ch. 433, L. 1971; amd. Sec. 43, Ch. 348, L. 1974.

#### Amendments

The 1974 amendment substituted refer-

ences to the department for references to the aeronautics commission throughout; and made a minor change in phraseology.

**1-903. Department control of airport operation and income.** The department may control the operation of airports constructed under the provisions of 1-902 and may provide for the imposition of landing fees, granting of fuel and service concessions, or the lease of portions of the premises for other related airport services or for purposes not inconsistent with the use of the premises for airport purposes. All income from the operation of such airports shall be deposited in the state treasury in the airport operating account within the revolving fund. All expenditures from the account shall be within the limits of legislative appropriations and shall be made upon vouchers signed and approved by the director of the department.

**History:** En. 1-903 by Sec. 3, Ch. 433, L. 1971; amd. Sec. 44, Ch. 348, L. 1974; amd. Sec. 6, Ch. 232, L. 1977.

#### Amendments

The 1974 amendment substituted "department" for "aeronautics commission" at the beginning and at the end of this section.

The 1977 amendment substituted "may" for "shall" near the beginning of the first sentence; substituted "the airport operating account within the revolving fund" at the end of the second sentence for "a special operating fund to be known as the airport operating fund"; substituted "the account" for "such fund" near the beginning of the third sentence; and made minor changes in phraseology.

**1-904. Creation of municipal airport authority.** Any municipality may, by resolution of its governing body, create a public body corporate and politic to be known as a municipal airport authority, which shall be authorized to exercise its functions upon the appointment and qualification of the first commissioners thereof; or the governing body may by resolution determine to exercise any or all powers granted to such authori-



ties in this chapter until or unless such powers are or have been conferred upon a municipal or regional airport authority. Upon the adoption of a resolution creating a municipal airport authority, the governing body of the municipality shall, pursuant to the resolution, appoint not less than five (5) persons as commissioners of the authority. The commissioners who are first appointed shall be designated to serve for terms of one (1), two (2), three (3), four (4), and five (5) years, respectively, but thereafter, each commissioner shall be appointed for a term of five (5) years, except that vacancies occurring otherwise than by expiration of the term shall be filled for the unexpired term by the governing body.

History: En. 1-904 by Sec. 4, Ch. 433, L. 1971; amd. Sec. 1, Ch. 57, L. 1975.

ber of persons to be appointed as commissioners from five to "not less than five."

#### Amendments

The 1975 amendment changed the num-

**1-905. Creation of regional airport authority.** 1. Two (2) or more municipalities may, by joint resolution create a public body, corporate and politic, to be known as a regional airport authority that the resolution creating a regional airport authority shall create a board of not less than five (5) commissioners; the number to be appointed, their term and compensation, if any, shall be provided for in the resolution. Each such regional airport authority shall organize, select officers for terms to be fixed by agreement and adopt and amend from time to time rules for its own procedure not inconsistent with section 1-908.

2. A regional airport authority may be increased from time to time to serve one (1) or more additional municipalities if each additional municipality and each of the municipalities then included in the regional authority and the commissioners of the regional authority, respectively, adopt a joint resolution consenting thereto; provided, that if a municipal airport authority for any municipality seeking to be included in the regional authority is then in existence, the commissioners of the municipal authority must consent to the inclusion of the municipality in the regional authority. Upon the inclusion of any municipality in the regional authority, all rights, contracts, obligation, and property, real and personal, of the municipal authority shall be in the name of and vest in the regional authority.

3. A regional airport authority may be decreased if each of the municipalities then included in the regional authority and the commissioners of the regional authority consent to the decrease and make provisions for the retention or disposition of its assets and liabilities.

4. A municipality shall not adopt any resolution authorized by this section without a public hearing thereon. Notice thereof shall be given at least ten (10) days prior thereto in a newspaper published in the municipality, or if there is no newspaper published therein, then in a newspaper having general circulation in the municipality.

History: En. 1-905 by Sec. 5, Ch. 433, L. 1971.

**1-906. Sinking funds for repair, maintenance and capital outlays.** An airport authority may create a sinking fund and accumulate therein

the sum of five million dollars (\$5,000,000) together with interest thereon for the use, repairs, maintenance and capital outlays of an airport.

History: En. 1-906 by Sec. 6, Ch. 433,  
L. 1971; amd. Sec. 1, Ch. 86, L. 1975.

#### Amendments

The 1975 amendment substituted "airport" for "air navigation facility" at the end of the section.

**1-908. Commissioners—compensation—meetings—officers.** A commissioner of an authority shall be entitled to the necessary expense, including travel expenses, as provided for in sections 59-538, 59-539, and 59-801, incurred in the discharge of his duties. Each commissioner shall hold office until his successor has been appointed and has qualified. The certificates of the appointment and reappointment of commissioners shall be filed with the authority.

The powers of each authority shall be vested in the commissioners thereof. A majority of the commissioners of an authority shall constitute a quorum for the purpose of conducting business of the authority and exercising its powers and for all other purposes. Action may be taken by the authority upon a vote of not less than a majority of the commissioners present.

There shall be elected a chairman and vice-chairman from among the commissioners. An authority may employ an executive director, secretary, technical experts, and such other officers, agents, and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. An authority may delegate to one (1) or more of its agents or employees such powers or duties as it may deem proper.

History: En. 1-908 by Sec. 7, Ch. 433,  
L. 1971; amd. Sec. 4, Ch. 439, L. 1975.

#### Amendments

The 1975 amendment inserted "as provided for in sections 59-538, 59-539, and 59-801," in the first sentence of the first paragraph.

#### Compiler's Notes

As enacted, Chapter 433, Laws 1971 contained no section 1-907.

**1-909. General powers of an authority.** An authority shall have all the powers necessary or convenient to carry out the purposes of this chapter including the power to certify, annually to the governing bodies creating it, the amount of tax to be levied by said governing bodies for airport purposes including, but not limited to, the power:

1. To sue and be sued; to have a seal; and to have perpetual succession;
2. To execute such contracts and other instruments and take such other action as may be necessary or convenient to carry out the purposes of this chapter;
3. To plan, establish, acquire, develop, construct, purchase, enlarge, improve, maintain, equip, operate, regulate, and protect airports and air navigation facilities, within this state and within any adjoining state, including the acquisition, construction, installation, equipment, maintenance, and operation at such airports or buildings and other facilities for the servicing of aircraft or for comfort and accommodation of air travelers, and the purchase and sale of supplies, goods, and commodities as



are incident to the operation of its airport properties. For such purposes an authority may by purchase, gift, devise, lease, eminent domain proceedings or otherwise, acquire property, real or personal, or any interest therein, including easements in airport hazards or land outside the boundaries of an airport or airport site, as are necessary to permit the removal, elimination, obstruction-marking or obstruction-lighting of airport hazards or to prevent the establishment of airport hazards.

4. To establish comprehensive airport zoning regulations in accordance with the laws of this state. For the purpose of this chapter, a regional airport authority shall have the same powers as all other political subdivisions in the adoption and enforcement of comprehensive airport zoning regulations as provided for by the laws of this state.

5. To acquire, by purchase, gift, devise, lease, eminent domain proceedings or otherwise, existing airports and air navigation facilities, provided, however, an authority shall not acquire or take over any airport or air navigation facility owned or controlled by another authority, a municipality, or public agency of this or any other state without the consent of such authority, municipality or public agency.

6. To establish or acquire and maintain airports in, over, and upon any public waters of this state, any submerged lands under such public waters provided that the authority has obtained the approval of the owner or agency that controls the water; and to construct and maintain terminal buildings, landing floats, causeways, roadways, and bridges for approaches to or connecting with any such airport, and landing floats and breakwaters for the protection thereof.

**History:** En. 1-909 by Sec. 8, Ch. 433,  
L. 1971.

**1-910. Eminent domain.** In the acquisition of property by eminent domain proceedings authorized by this chapter, an airport authority shall proceed in the manner provided by the laws of this state, and such other laws that may now or hereafter apply to the state or to political subdivisions of this state in exercising the right of eminent domain. The municipality shall not be precluded from abandoning such proceedings in any case where possession of the property has not been taken.

**History:** En. 1-910 by Sec. 9, Ch. 433,  
L. 1971.

**1-911. Disposal of airport property.** Except as may be limited by the terms and conditions of any grant, loan or agreement, authorized by section 1-915 of this chapter, an authority may, by sale, lease, or otherwise, dispose of any airport, air navigation facility or other property, or portion thereof or interest therein, acquired pursuant to this chapter. Such disposal by sale, lease, or otherwise, shall be in accordance with the laws of this state governing the disposition of other public property, except that in the case of disposal to another authority, a municipality or an agency of the state or federal government for use and operation as a public airport, the sale, lease, or other disposal may be effected in such



manner and upon such terms as the commissioners of the authority may deem in the best interest of civil aviation.

**History:** En. 1-911 by Sec. 10, Ch. 433,  
L. 1971.

**1-912. Bonds and other obligations.** (1) An authority may borrow money for any of its corporate purposes and issue its bonds therefor, including refunding bonds, in such form and upon such terms as it may determine, payable out of any revenues of the authority, including revenues derived from:

- (a) an airport or air navigation facility or facilities;
- (b) taxes levied pursuant to 1-916 or other law for airport purposes;
- (c) grants or contributions from the federal government; or
- (d) other sources.

(2) The bonds may be issued by resolution of the authority, without an election and without any limitation of amount, except that no such bonds may be issued at any time if the total amount of principal and interest to become due in any year on such bonds and on any then outstanding bonds for which revenues from the same source or sources are pledged exceeds the amount of such revenues to be received in that year as estimated in the resolution authorizing the issuance of the bonds. The authority shall take all action necessary and possible to impose, maintain, and collect rates, charges, rentals, and taxes, if any are pledged, sufficient to make the revenues from the pledged source in such year at least equal to the amount of such principal and interest due in that year.

(3) The bonds may be sold at public or private sale and may bear interest at a rate not exceeding 10% a year. Except as otherwise provided herein, any bonds issued pursuant to this chapter by an authority may be payable as to principal and interest solely from revenues of the authority and shall state on their face the applicable limitations or restrictions regarding the source from which such principal and interest are payable.

(4) Bonds issued by an authority or municipality pursuant to the provisions of this chapter are declared to be issued for an essential public and governmental purpose by a political subdivision within the meaning of 84-4905(2)(a).

(5) For the security of any such bonds, the authority or municipality may by resolution make and enter into any covenant, agreement, or indenture and may exercise any additional powers authorized to be exercised by a municipality under Title 11, chapter 24. The sums required from time to time to pay principal and interest and to create and maintain a reserve for the bonds may be paid from any revenues referred to in this chapter, prior to the payment of current costs of operation and maintenance of the facilities.

(6) Subject to the conditions stated in this subsection (6), the governing body of any municipality having a population in excess of 10,000, with respect to bonds issued pursuant to this chapter by the municipality or by an authority in which the municipality is included, may by resolution cove-

nant that in the event that at any time all revenues, including taxes, appropriated and collected for such bonds are insufficient to pay principal or interest then due, it will levy a general tax upon all of the taxable property in the municipality for the payment of such deficiency, and may further covenant that at any time a deficiency is likely to occur within 1 year for the payment of principal and interest due on such bonds, it will levy a general tax upon all the taxable property in the municipality for the payment of such deficiency, and such taxes are not subject to any limitation of rate or amount applicable to other municipal taxes but shall be limited to a rate estimated to be sufficient to produce the amount of the deficiency. In the event more than one municipality having a population in excess of 10,000 is included in an authority issuing bonds pursuant to this chapter, the municipalities may apportion the obligation to levy taxes for the payment of, or in anticipation of, a deficiency in the revenues appropriated for such bonds in such manner as the municipalities may determine. The resolution shall state the principal amount and purpose of the bonds and the substance of the covenant respecting deficiencies. No such resolution becomes effective until the question of its approval has been submitted to the qualified electors of the municipality at a special election called for that purpose by the governing body of the municipality and a majority of the electors voting on the question have voted in favor thereof. The notice and conduct of the election shall be governed, to the extent applicable, by 11-2308 and 11-2310 for an election called by cities and towns, and 16-2024 and 16-2026 for an election called by counties. If a majority of the electors voting thereon vote against approval of the resolution, the municipality has no authority to make the covenant or to levy a tax for the payment of deficiencies pursuant to this section, but such municipality or authority may nevertheless issue bonds under this chapter payable solely from the sources referred to in subsection (1) above.

**History:** En. 1-912 by Sec. 11, Ch. 433, L. 1971; amd. Sec. 1, Ch. 501, L. 1973; amd. Sec. 7, Ch. 232, L. 1977.

#### Amendments

The 1973 amendment divided the section into numbered subsections; inserted clauses (a) and (b) in the first paragraph of subsection (1); inserted the first two sentences of the paragraph following the lettered clauses in subsection (1); inserted "Except as otherwise provided herein" at the beginning of the final sentence of the first paragraph after the lettered clauses; substituted "revenues of the authority" for "revenues of an airport or air navigation facility or facilities" in the same sentence; deleted "and that said bonds shall be issued as set forth in Title 11, chapter 24, R. C. M. 1947" from the end of the paragraph following the lettered clauses; added "regarding the source or sources from which such principal and interest are payable" at the end of the paragraph following the lettered clauses; substituted "by a political subdivision within the meaning of section 84-4905(2)

(a)" at the end of the second paragraph after the lettered clauses for "and, together with interest thereon, and income therefrom, shall be exempt from all taxes"; substituted "and exercise any additional powers authorized to be made, entered into or exercised by a municipality under Title 11, chapter 24" at the end of the first sentence of the final paragraph of subsection (1) for "authorized to be made as security for revenue bonds"; inserted "Subject to the conditions stated in this paragraph (2)" at the beginning of subsection (2); substituted "may . . . by resolution covenant that . . . it will levy" for "shall be required . . . to levy" in the first sentence of subsection (2); substituted "may further covenant that . . . it will" for "may levy" later in the same sentence; substituted "but shall be limited to a rate estimated to be sufficient to produce the amount of the deficiency" at the end of the first sentence of subsection (2) and the last five sentences of subsection (2) for a proviso and final sentence requiring publication of the resolution and prohibiting further proceed-



ings on protest by owners of 20% of the taxable property; and made minor changes in phraseology and style.

The 1977 amendment substituted "may" for "shall have the power to" near the beginning of subsection (1); inserted present subsection designations (2) through (5); substituted "may" for "shall" in the second sentence of subsection (3) before "be payable as to principal and interest"; redesignated former subsection (2) as sub-

section (6); substituted "subsection (6)" for "paragraph (2)" near the beginning of the first sentence of subsection (6); substituted "may" for "shall" before "determine" at the end of the second sentence of subsection (6); substituted "16-2024" for "16-202" near the end of the fifth sentence of subsection (6); and made minor changes in phraseology, punctuation and style.

**1-913. Operation and use privileges.** 1. In connection with the operation of an airport or air navigation facility owned or controlled by an authority, the authority may enter into contracts, leases, and other arrangements for terms not to exceed thirty (30) years with any persons:

a. Granting the privilege of using or improving the airport or air navigation facility or any portion or facility thereof or space therein for commercial purposes;

b. Conferring the privilege of supplying goods, commodities, things, services, or facilities at the airport or air navigation facility; and

c. Making available services to be furnished by the authority or its agents at the airport or air navigation facility.

In each case the authority may establish the terms and conditions and fix the charges, rentals, or fees for the privileges or services, which shall be reasonable and uniform for the same class or [of] privilege of [or] service and shall be established with due regard to the property and improvements used and the expenses of operation to the authority; provided that in no case shall the public be deprived of its rightful, equal, and uniform use of the airport, air navigation facility, or portion of facility thereof.

2. Except as may be limited by the terms and conditions of any grant, loan, or agreement authorized by section 1-919 of this chapter, an authority may by contract, lease, or other arrangements, upon a consideration fixed by it, grant to any qualified person for a term not to exceed thirty (30) years the privilege of operating, as agent of the authority or otherwise, any airport owned or controlled by the authority; provided that no person shall be granted any authority to operate an airport other than as a public airport or to enter into any contracts, leases, or other arrangements in connection with the operation of the airport which the authority might not have undertaken under subsection 1 of this section.

History: En. 1-913 by Sec. 12, Ch. 433,  
L. 1971.

**1-914. Regulations.** An authority is authorized to adopt, amend, and repeal such reasonable resolutions, rules, regulations, and orders as it shall deem necessary for the management, government, and use of any airport or air navigation facility owned by it or under its control. No rule, regulation, order, or standard prescribed by the commission shall be inconsistent with, or contrary to, any act of the Congress of the United States or any regulation promulgated or standard established pursuant



thereto. The authority shall keep on file at the principal office of the authority for public inspection a copy of all its rules and regulations.

History: En. 1-914 by Sec. 13, Ch. 433, L. 1971.

**1-915. Federal and state aid.** (1) An authority may accept, receive, receipt for, and spend federal and state moneys and other moneys, public or private, made available by grant or loan, to accomplish any of the purposes of this chapter. All federal moneys accepted under this section shall be accepted and spent by the authority upon terms and conditions prescribed by the United States and consistent with state law. All state moneys accepted under this section shall be accepted and spent by the authority upon terms and conditions prescribed by the state.

(2) An authority may designate the department as its agent to accept, receive, receipt for, and disburse federal and state moneys, and other moneys, public or private, made available by grant or loan, to accomplish in whole or in part, any of the purposes of this chapter; and may designate the department as its agent in contracting for and supervising the planning, acquisition, development, construction, improvement, maintenance, equipment, or operation of any airport or other air navigation facility. An authority may enter into an agreement with the department prescribing the terms and conditions of the agency in accordance with terms and conditions prescribed by the United States, if federal money is involved, and in accordance with the applicable laws of this state. All federal moneys accepted under this section by the department shall be accepted and transferred or spent by the department upon terms and conditions prescribed by the United States. All moneys received by the department under this subsection shall be deposited in the state treasury, and unless otherwise prescribed by the agency from which the moneys were received, shall be kept in separate funds designated according to the purposes for which the moneys were made available, and held by the state in trust for those purposes.

History: En. 1-915 by Sec. 14, Ch. 433, L. 1971; amd. Sec. 45, Ch. 348, L. 1974.

#### Amendments

The 1974 amendment substituted refer-

ences to the department for references to the state aeronautics commission throughout; and made minor changes in style and phraseology.

**1-916. Tax levy may be certified by airport authority or municipality.** The airport authority may certify annually to the governing bodies, the amount of tax to be levied by each municipality participating in the creation of the airport authority, and the municipality shall levy the amount certified, pursuant to provisions of law authorizing cities and other political subdivisions of this state to levy taxes for airport purposes. The levy made shall not exceed the maximum levy permitted by the laws of this state for airport purposes or any such lower limit as may have been established by the municipality or municipalities in the resolution creating the authority. The municipality shall collect the taxes certified by an airport authority in the same manner as other taxes are levied and collected and make payment to the airport authority. The proceeds of such taxes when and as paid to the airport authority shall be deposited in a special account or accounts in

which other revenues of the authority are deposited and may be expended by the authority as provided for in this chapter. Prior to the issuance of bonds under section 1-912 the airport authority or the municipality may by resolution covenant and agree that the total amount of such taxes then authorized by law, or such portion thereof as may be specified by the resolution, will be certified, levied and deposited annually as herein provided, until the bonds and interest thereon are fully paid.

**History:** En. 1-916 by Sec. 15, Ch. 433, L. 1971; amd. Sec. 2, Ch. 501, L. 1973.

and inserted "or any such lower limit as may have been established by the municipality or municipalities in the resolution creating the authority" at the end of the second sentence.

#### **Amendments**

The 1973 amendment substituted "shall levy" for "may levy" in the first sentence;

**1-917. County tax levy for airport purposes.** In counties supporting airports or airport authorities, a levy, as provided for in section 1-804, R.C.M. 1947, may be made for such purposes.

**History:** En. 1-917 by Sec. 16, Ch. 433, L. 1971.

**1-918. Joint exercise of powers.** (1) For the purposes of this section, unless otherwise qualified, the term "public agency" includes municipality and authority, each as defined in this chapter, any agency of the state government and of the United States, and any municipality, political subdivision, or agency of an adjoining state. The term "governing body" includes commissioners of an authority, the governing body of a municipality, and the head of an agency of a state or the United States if the public agency is other than an authority or municipality. All powers, privileges, and authority granted by this chapter may be exercised and enjoyed by an authority jointly with any public agency of this state, and jointly with any public agency of any adjoining state or of the United States to the extent that the laws of such other state or of the United States permit such joint exercise or enjoyment. Any agency of the state government, when acting jointly with any authority, may exercise and enjoy all the powers, privileges, and authority conferred by this chapter upon an authority.

(2) Any two or more public agencies may enter into agreements with each other for joint action pursuant to the provisions of this section. Each agreement shall specify its duration; the proportionate interest which each public agency will have in the property, facilities, and privileges involved in the joint undertaking; the proportion of costs of operation, capital outlay, and maintenance to be borne by each public agency; and such other terms as are considered necessary or required by law. The agreement may also provide for amendments and termination; disposal of all or any of the property, facilities, and privileges jointly owned prior to or at such times as the property, facilities, and privileges, or any part thereof, cease to be used for the purposes provided in this chapter or upon termination of the agreement; the distribution of the proceeds received upon any disposal, and of any funds or other property jointly owned and undisposed of; the assumption of payment of any indebtedness arising from the joint undertaking which remains unpaid upon the disposal of all assets or upon a



termination of the agreement; and such other provisions as may be necessary or convenient.

(3) Public agencies acting jointly pursuant to this section shall create a joint board which shall consist of members appointed by the governing body of each participating public agency. The number to be appointed and their term and compensation, if any, shall be provided for in the joint agreement. Each joint board shall organize, select officers for such terms as are fixed by the agreement, and adopt and amend from time to time rules for its own procedure. The joint board, as agent of the participating public agencies, may plan, acquire, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate, protect, and police any airport or air navigation facility or airport hazard to be jointly acquired, controlled, and operated; and the board may be authorized by the participating public agencies to exercise on behalf of its constituent public agencies all the powers of each with respect to the airport, air navigation facility, or airport hazard, subject to the limitations of subsection (4) of this section.

(4) (a) The total expenditures to be made by the joint board for any purpose in any calendar year shall be as determined by a budget approved by the constituent public agencies on or before the preceding June 10 or as otherwise specifically authorized by the constituent public agencies.

(b) No airport, air navigation facility, airport hazard, or real or personal property, the cost of which is in excess of sums fixed therefor by the joint agreement or allotted in the annual budget, may be acquired, established, or developed by the joint board without the approval of the governing bodies of its constituent public agencies.

(c) Eminent domain proceedings under this section may be instituted by the joint board only by authority of the governing bodies of the constituent public agencies of the joint board. If so authorized, such proceedings shall be instituted in the names of the constituent public agencies jointly, and the property so acquired shall be held by the public agencies as tenants in common.

(d) The joint board may not dispose of any airport, air navigation facility, or real property under its jurisdiction except with the consent of the governing bodies of its constituent public agencies. However, the joint board may, without such consent, enter into contracts, leases, or other arrangements contemplated by 1-913 of this chapter.

(e) Resolutions, rules, or orders of the joint board dealing with subjects authorized by 1-913 of this chapter become effective only upon approval of the governing bodies of the constituent public agencies. However, upon such approval, the resolutions, rules, or orders of the joint board shall have the same force in the territories or jurisdiction involved as the ordinances, resolutions, rules, or orders of each public agency would have in its own territory or jurisdiction.

(5) For the purpose of providing the joint board with moneys for the necessary expenditures in carrying out the provisions of this section, a joint fund shall be created and maintained, into which shall be deposited the share of each of the constituent public agencies as provided by the joint



agreement. Any federal, state, or other grants, contributions, or loans and the revenues obtained from the joint ownership, control, and operation of any airport or air navigation facility under the jurisdiction of the joint board shall be paid into the joint fund. Disbursements from such fund shall be made by order of the board, subject to the limitations prescribed in subsection (4) of this section.

**History:** En. 1-918 by Sec. 17, Ch. 433, L. 1971; amd. Sec. 8, Ch. 232, L. 1977.

#### Amendments

The 1977 amendment substituted "considered" for "deemed" near the end of the second sentence of subsection (2)

before "necessary or required by law"; substituted "may" for "shall" near the beginning of the fourth sentence of subsection (3) after "agent of the participating public agencies"; and made minor changes in phraseology, punctuation and style.

**1-919. Public purpose.** The acquisition of any land, or interest therein, pursuant to this chapter, the planning, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, regulation, and protection of airports and air navigation facilities, including the acquisition or elimination of airport hazards, and the exercise of any powers herein granted to authorities and other public agencies to be severally or jointly exercised, are hereby declared to be public and governmental functions, exercised for a public purpose, and matters of public necessity. All land and other property and privileges acquired and used by or on behalf of any authority or other public agency in the manner and for the purposes enumerated in this chapter shall and are hereby declared to be acquired and used for public and governmental purposes and as a matter of public necessity.

**History:** En. 1-919 by Sec. 18, Ch. 433, L. 1971.

**1-920. Airport property and income exempt from taxation.** Any property in this state acquired by an authority for airport purposes pursuant to the provisions of this chapter, and any income derived by the authority from the ownership, operation, or control thereof, shall be exempt from taxation to the same extent as other property used for public purpose.

**History:** En. 1-920 by Sec. 19, Ch. 433, L. 1971.

**1-921. Municipal co-operation.** For the purpose of aiding and co-operating in the planning, undertaking, construction, or operation of airports and air navigation facilities pursuant to the provisions of this chapter, any municipality for which an authority has been created may, upon such terms, with or without consideration, as it may determine,

1. Lend or donate money to the authority;
2. Provide that all or a portion of the taxes of funds available or to become available to, or required by law to be used by, the municipality for airport purposes, be transferred or paid directly to the airport authority as such funds become available to the municipality;
3. Cause water, sewer, or drainage facilities, or any other facilities which it is empowered to provide, to be furnished adjacent to or in connection with such airports or air navigation facilities;

4. Dedicate, sell, convey, or lease any of its interest in any property, or grant easements, licenses, or any other rights or privileges therein to the authority;

5. Furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways, and walks from established streets or roads to such airports or air navigation facilities;

6. Do any and all things, whether or not specifically authorized in this section and not otherwise prohibited by law, that are necessary or convenient to aid and co-operate with the authority in the planning, undertaking, construction, or operation of airports and air navigation facilities; and

7. Enter into agreements with the authority respecting action to be taken by the municipality pursuant to the provisions of this section.

History: En. 1-921 by Sec. 20, Ch. 433,  
L. 1971.

**1-922. Out-of-state airport jurisdiction authorized — reciprocity with adjoining state and governmental agencies.** For the purpose of this section, "governmental agency" means any municipality, city, town, county, public corporation, or other public agency.

This state or any governmental agency of this state having any powers with respect to planning, establishing, acquiring, developing, constructing, enlarging, improving, maintaining, equipping, operating, regulating, or protecting airports or air navigation facilities within this state, may exercise those powers within any state or jurisdiction adjoining this state, subject to the laws of that state or jurisdiction.

Any state adjoining this state or any governmental agency thereof may plan, establish, acquire, develop, construct, enlarge, improve, maintain, equip, operate, regulate, and protect airports and air navigation facilities within this state, subject to the laws of this state applicable to airports and air navigation facilities. The adjoining state or governmental agency shall have the power of eminent domain in this state, which shall be exercised in the manner provided by the laws of this state governing condemnation proceedings, provided that the power of eminent domain shall not be exercised unless the adjoining state authorizes the exercise of that power therein by this state or any governmental agency thereof having any of the powers mentioned in this section.

The powers granted in this section may be exercised jointly by two (2) or more states or governmental agencies, including this state and its governmental agencies, in such combination as may be agreed upon by them.

This section may be cited as the "Extraterritorial Airports Section."

History: En. 1-922 by Sec. 21, Ch. 433,  
L. 1971.

**1-923. Supplemental authority.** In addition to the general and special powers conferred by this chapter, every authority is authorized to exercise

such powers as are necessary incidental to the exercise of such general and special powers.

**History:** En. 1-923 by Sec. 22, Ch. 433,  
L. 1971.

**1-924. Savings clause—airport zoning.** Nothing contained in this chapter shall be construed to limit any right, power, or authority of a municipality to regulate airport hazards by zoning.

**History:** En. 1-924 by Sec. 23, Ch. 433,  
L. 1971.

**1-925. Short title.** This chapter may be cited as the "Airport Authorities Act."

**History:** En. 1-925 by Sec. 24, Ch. 433,  
L. 1971.

### **1-926. Repealed.**

**Repeal** the repealing clause, was repealed by Sec. Section 1-926 (Sec. 25, Ch. 433, L. 1971), 107, Ch. 348, Laws 1974.

**1-927. Severability clause.** It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one (1) or more of its applications, the part that remains in effect in all valid applications are severable from the invalid applications.

**History:** En. 1-927 by Sec. 26, Ch. 433, L. 1971. vided the act should be in effect from and after its passage and approval. Approved March 18, 1971.

#### **Effective Date**

Section 27 of Ch. 433, Laws 1971 pro-

## **CHAPTER 10—AIRPORT PASSENGER SERVICE CHARGES**

(Repealed—Section 10, Chapter 232, Laws of 1977)

### **1-1001 to 1-1005. Repealed.**

**Repeal** senger service charges, were repealed by Sections 1-1001 to 1-1005 (Sees. 1 to 5, Sec. 10, Ch. 232, Laws 1977. Ch. 427, L. 1973), relating to airport pas-

## **CHAPTER 11—STATE-OWNED OR LEASED AIRPLANES**

### **Section**

- 1-1101. Department as custodian of state airplanes.
- 1-1102. Rules and regulations—authority and enforcement.
- 1-1103. Deficit.
- 1-1104. New equipment.
- 1-1105. Act not to impair federal aid eligibility—severable construction.

**1-1101. Department as custodian of state airplanes.** The department is hereby designated the custodian of all airplanes owned or leased by the state of Montana or its boards, commissions, or agencies.



**History:** En. 1-1101 by Sec. 1, Ch. 378, L. 1974; amd. Sec. 4, Ch. 213, L. 1975; amd. Sec. 9, Ch. 232, L. 1977.

#### **Title of Act**

An act relating to airplanes owned or leased by the state of Montana; constituting the department of intergovernmental relations as custodian of state-owned or leased airplanes; and providing for rules and regulations governing the use of state-owned or leased airplanes.

#### **Amendments**

The 1975 amendment substituted "department of community affairs" for "department of intergovernmental relations."

The 1977 amendment deleted "of community affairs" after "department"; and made minor changes in phraseology and punctuation.

#### **Repealing Clause**

Section 10 of Ch. 232, Laws 1977 read "Sections 1-829 through 1-832 and 1-1001 through 1-1005, R.C.M. 1947, are repealed."

**1-1102. Rules and regulations—authority and enforcement.** The department of community affairs is hereby delegated the power and authority:

- (1) to formulate and enforce reasonable rules and regulations governing the use and operation of all airplanes under control of the division;
- (2) to encourage and co-ordinate use of such airplanes by individual state agencies—an agency for which an aircraft has been specially equipped or modified shall have priority for the use of such aircraft;
- (3) to charge the individual state agencies using the airplanes the estimated costs for administration, operation, maintenance, service, storage, and replacement;
- (4) to establish a capital fund for new and replacement equipment using that portion of the money paid by individual state agencies for the use of the airplanes; and
- (5) to place any surplus resulting from use charges into the capital fund.

**History:** En. 1-1102 by Sec. 2, Ch. 378, L. 1974; amd. Sec. 5, Ch. 213, L. 1975.

#### **Amendments**

The 1975 amendment substituted "de-

partment of community affairs" for "department of intergovernmental relations" in the preliminary clause.

**1-1103. Deficit.** Any deficit resulting from the operation of the airplanes by the department of community affairs shall be provided for in the state's general fund budget as determined by legislative action.

**History:** En. 1-1103 by Sec. 3, Ch. 378, L. 1974; amd. Sec. 6, Ch. 213, L. 1975.

#### **Amendments**

The 1975 amendment substituted "department of community affairs" for "department of intergovernmental relations."

**1-1104. New equipment.** New equipment as authorized by legislative action shall be purchased with the capital fund. Additional funds for such purchases may be provided for in the state's general fund budget.

**History:** En. 1-1104 by Sec. 4, Ch. 378, L. 1974.

**1-1105. Act not to impair federal aid eligibility—severable construction.** If any provision of this act impairs or jeopardizes the ability of a state agency to accept and expend federal funds, that provision shall be

considered invalid as to that agency. It is the intent of the legislature that if a part of this act is invalid in one or more of its applications, all other parts and applications of that part which are severable shall remain in effect.

**History:** En. 1-1105 by Sec. 5, Ch. 378,  
L. 1974.





## TITLE 2—AGENCY

### CHAPTER 1—DEFINITION OF AGENCY—AUTHORITY OF AGENTS

#### 2-101. (7928) Agency defined.

##### Factors Determining Existence of Agency

Where service station proprietor was not required to file any written reports to oil company, proprietor could stock any merchandise of his choosing, oil company did not inspect service station and did not require proprietor to wear any particular uniform or to operate station during any particular hours, and only written

agreements between oil company and proprietor were equipment leases and truck rental; oil company was not liable for injury sustained by third person on service station premises due to gasoline fire since relationship between oil company and proprietor was not one of actual agency under this section. *Elkins v. Husky Oil Co.*, 153 M 159, 455 P 2d 329.

#### 2-106. (7933) Ostensible agency.

##### Acts and Statements Establishing Agency

Where retailer placed orders through wholesaler, but received billings directly from manufacturer, and manufacturer attended sales and promotion meetings arranged by wholesaler, retailer was entitled to rely on the ostensible agency relationship between the manufacturer and the wholesaler. *Butler Mfg. Co. v. J & L Implement Co.*, — M —, 540 P 2d 962.

##### Insufficient Evidence

Fact that service station proprietor displayed signs advertising oil company's products and honored oil company's credit cards, was not sufficient to make proprietor ostensible agent of oil company under

this section or section 2-124, and therefore oil company was not liable for injury sustained by third person on service station premises. *Elkins v. Husky Oil Co.*, 153 M 159, 455 P 2d 329.

Pilot was not ostensible agent of aviation service where owner of plane made own arrangements with pilot and plaintiff's decedent did not rely on aviation service's responsibility, even though aviation service had introduced pilot to plane owner, had previously supplied its own employees as pilots, furnished weather information for flight plans, and organized recovery activities after plane had gone down. *Calkins v. Oxbow Ranch, Inc.*, 159 M 120, 495 P 2d 1124.

#### 2-122. (7945) Measure of agent's authority.

##### Conduct of Business

Retailer was entitled to rely on the ostensible authority of wholesaler to grant credit for return of steel grain bins, where wholesaler was the apparent agent of manufacturer, and representatives of the manufacturer had been present when wholesaler had agreed on the return of the bins, and manufacturer had previously given credit for return of other bins. *Butler Mfg. Co. v. J & L Implement Co.*, — M —, 540 P 2d 962.

##### Failure To Make Authority Known

Authority of bank to apply funds from check endorsed in blank by debtor and delivered to bank by his wife was not measureable in terms of authority that debtor conferred upon his wife without regard to whether that authority or its limitations were made known to bank. *Baker Nat. Bank v. Lestar*, 153 M 45, 453 P 2d 774.

#### 2-124. (7947) Ostensible authority defined.

##### Acts and Statements Establishing Agency

Where retailer dealt with wholesaler as an agent of the manufacturer, placing orders and receiving delivery through wholesaler, but receiving billings and remitting payments to manufacturer, wholesaler had ostensible authority to agree

that manufacturer would give credit for return of grain bins. *Butler Mfg. Co. v. J & L Implement Co.*, — M —, 540 P 2d 962.

##### Insufficient Evidence

Fact that service station proprietor displayed signs advertising oil company's

products and honored oil company's credit cards, was not sufficient to make proprietor ostensible agent of oil company under this section or section 2-106, and therefore oil

company was not liable for injury sustained by third person on service station premises. *Elkins v. Husky Oil Co.*, 153 M 159, 455 P 2d 329.

## CHAPTER 2—MUTUAL OBLIGATIONS BETWEEN PRINCIPALS, AGENTS AND THIRD PERSONS

### 2-205. (7691) Principal bound by acts of agent, etc.

#### Binding Agreement

Where grain bins were returned to wholesale agency with the knowledge and apparent approval of the manufacturer, manufacturer could not later repudiate the agreement and hold retailer liable for the purchase price. *Butler Mfg. Co. v. J & L Implement Co.*, — M —, 540 P 2d 962.

#### Notice of Repudiation

Reasonable promptness of the disavowal of ostensible agency was an open question of fact where representatives of the manufacturer were present when wholesale agent arranged with retailer for return of merchandise, but manufacturer did not repudiate agreement until retailer requested credit. *Butler Mfg. Co. v. J & L Implement Co.*, — M —, 540 P 2d 962.

### 2-212. (7968) Agent's responsibility to third persons.

#### Attorney

In action by sheriff to recover warehouse storage fees, attorney of judgment creditor was not liable as agent of his

client, since he was known to be only an agent, and credit had not been extended to him personally. *Hasbrouck v. Krsul*, — M —, 541 P 2d 1197.

## TITLE 3—AGRICULTURE, HORTICULTURE AND DAIRYING

### Chapter

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29. Wheat research and marketing, 3-2902, 3-2904, 3-2906, 3-2909, 3-2911, 3-2913, 3-2915 to 3-2917.
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31. Apiaries, 3-3101 to 3-3112.
32. Itinerant merchants, 3-3201 to 3-3215.
33. Produce wholesalers, 3-3301 to 3-3312.
34. Apples, inspection, grading and packing, 3-3401, 3-3402, 3-3404.
35. Cropland spraying program, 3-3501 to 3-3507.

### CHAPTER 1—DEPARTMENT OF AGRICULTURE—DUTIES

#### Section

- 3-106.1. Definition.  
3-107. Duties of department.  
3-113, 3-114. [Transferred.]  
3-116, 3-117. [Transferred.]  
3-119. [Transferred.]  
3-123. [Transferred.]

### 3-101. (3555) Repealed.

#### Repeal

Section 3-101 (Sec. 1, Ch. 216, L. 1921)  
relating to creation of department of agri-

culture, labor and industry, was repealed  
by Sec. 173, Ch. 218, Laws 1974.



**3-102 to 3-106. (3556 to 3560) Repealed.****Repeal**

Sections 3-102 to 3-106 (Sees. 2 to 6, Ch. 216, L. 1921; Sec. 1, Ch. 110, L. 1953; Sec. 1, Ch. 225, L. 1963; Sec. 9, Ch. 177, L. 1965; Sec. 1, Ch. 237, L. 1967; Sec. 4,

Ch. 93, L. 1969), relating to the department of agriculture, labor and industry, its commissioner, assistants, and biennial report, were repealed by Sec. 173, Ch. 218, Laws 1974.

**3-106.1. Definition.** Unless the context requires otherwise, in Title 3, "department" means the department of agriculture provided for in article XII, section 1 of the Montana constitution and in Title 82A, chapter 3.

**History:** En. 3-106.1 by Sec. 1, Ch. 218, L. 1974.

**Title of Act**

An act for the revision of the laws relating to the department of agriculture.

**3-107. (3561) Duties of department.** The department shall:

(1) Encourage and promote the interests of agriculture, including horticulture and apiculture, and all other allied industries;

(2) Collect and publish statistics relating to the production and marketing of crops and other agricultural products so far as the information may be of value to the agricultural and allied interests of the state;

(3) Assist, encourage, and promote the organization of farmers' institutes, horticultural and agricultural societies, the holding of fairs, livestock shows, or other exhibits of the products of agriculture;

(4) Adopt standards for open and closed receptacles for farm products and standards for the grade and other classification of farm products;

(5) Co-operate with producers and consumers in devising and maintaining economical and efficient systems of distribution, and aid in the reduction of waste and expense incidental to marketing;

(6) Have the authority to maintain a market news service, including information as to crops, freight rates, commission rates, and other matters as may be of service to producers and consumers, and act as a clearing-house for information of value to producers and consumers;

(7) Gather and diffuse information concerning the supply, demand, prevailing prices, and commercial movement of farm products;

(8) Investigate the practices and methods of factors, commission merchants, and others who receive, solicit, buy, sell, handle on commission or otherwise, or deal in grain, vegetables, or other farm products, so that distribution of the commodities is accomplished efficiently, economically, and without hardship, waste or fraud;

(9) Co-operate with Montana state university, the agricultural experiment station and the federal government for the betterment of the agricultural industries of the state, the improvement of rural life, and promotion of equality of opportunity for the farmers of the state;

(10) Take and hold in the name of the state of Montana property, real and personal, acquired by gifts, subscriptions, donations, and bequests;

(11) Sell and dispose of personal property owned by it in a manner the department may provide, when in the judgment of the department

the sale or disposal best promotes the purposes for which the department is established;

(12) Contract in respect to any matter within the scope of its authority;

(13) Enforce this title and all other laws for the protection and regulation of agriculture.

**History:** En. Sec. 7, Ch. 216, L. 1921; re-en. Sec. 3561, R. C. M. 1921; amd. Sec. 13, Ch. 80, L. 1961; amd. Sec. 2, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment substituted "Montana state university" in subdivision (9) for "state college of agriculture"; deleted a former subdivision (10) dealing with

homeseekers and land colonization; deleted a former subdivision (11) dealing with the state fair and fairgrounds; substituted the first reference to the department in subdivision (11) for "commissioner"; added subdivision (13); and made numerous changes in style, punctuation and phraseology. For prior version see parent volume.

### 3-108 to 3-112. (3562 to 3567) Repealed.

#### Repeal

Sections 3-108 to 3-112 (Secs. 8 to 11, 13, Ch. 216, L. 1921; Sec. 1, Ch. 88, L. 1939; Sec. 7, Ch. 177, L. 1951; Sec. 1, Ch. 97, L. 1953; Sec. 1, Ch. 25, L. 1965), relating to

divisions within the department of agriculture, the horticultural inspection and quarantine service, and department pursuits, regulations, and duties, were repealed by Sec. 173, Ch. 218, Laws 1974.

### 3-113, 3-114. [Transferred.]

#### Compiler's Notes

Sections 3 and 4, Ch. 218, Laws of 1974

renumbered these sections as secs. 3-24-138 and 3-24-139.

### 3-115. (3573) Repealed.

#### Repeal

Section 3-115 (Sec. 19, Ch. 216, L. 1921), relating to the division of grain standards

and marketing within the department of agriculture, was repealed by Sec. 173, Ch. 218, Laws 1974.

### 3-116, 3-117. [Transferred.]

#### Compiler's Notes

Sections 5 and 6, Ch. 218, Laws of 1974

renumbered these sections as secs. 3-3001 and 3-3002.

### 3-118. Repealed.

#### Repeal

Section 3-118 (Sec. 3, Ch. 330, L. 1969), relating to the agricultural marketing co-

ordinator, was repealed by Sec. 173, Ch. 218, Laws 1974.

### 3-119. [Transferred.]

#### Compiler's Notes

Section 7, Ch. 218, Laws of 1974 renumbered this section as sec. 3-3003.

### 3-120 to 3-122. Repealed.

#### Repeal

Sections 3-120 to 3-122 (Secs. 5 to 7, Ch. 330, L. 1969), relating to the agricultural marketing co-ordinator, the agri-

cultural marketing advisory body, and commissioner's reports, were repealed by Sec. 173, Ch. 218, Laws 1974.

**3-123. [Transferred.]****Compiler's Notes**

Section 8, Ch. 218, Laws of 1974 re-numbered this section as sec. 3-3004.

**CHAPTER 2—GRAIN STANDARDS—STORAGE AND INSPECTION—  
REGULATION OF GRAIN WAREHOUSEMEN**

**Section**

- 3-201. Definitions.
- 3-205. Inspectors of grain—samplers and weighers—qualifications—interest.
- 3-207. Designation of inspection points—inspectors.
- 3-208. Charges of public warehousemen.
- 3-209. Establishment of standard grain grades—procedure.
- 3-210. Rules governing dockage—sample inspection.
- 3-211. Appointment of inspectors.
- 3-212. Copies of grades and rules to be furnished warehousemen—display of them.
- 3-213. Fees for inspection, testing, and weighing grain.
- 3-215. Removal of inspectors, samplers, or weighers for misconduct.
- 3-216. Appeals to department—hearing and order.
- 3-217. Discrimination in charges by warehousemen prohibited.
- 3-218. Duty of warehousemen to receive grain—warehouse receipt.
- 3-220. Designation of grain delivered to warehouse.
- 3-221. Kind and quality of grain to be delivered on return of receipt.
- 3-222. Dispute as to grade or dockage—laboratory test to be made.
- 3-224. Termination of storage contract—sale of grain for charges.
- 3-225. Disposal of grain forbidden without notice to department of agriculture and compliance with law.
- 3-227. Reports—penalty for failure to report.
- 3-228.1. Definitions.
- 3-228.2. Licensing of grain merchandisers—fees—exemptions.
- 3-228.3. Suspension or revocation of license.
- 3-228.4. Appointment of agent to receive process by nonresident licensee.
- 3-228.5. Bond filed before issuance or renewal of license.
- 3-228.6. Insurance required of warehouseman.
- 3-228.7. Violation as misdemeanor.
- 3-228.8. Injunctive remedy.
- 3-229. Protection of holders of warehouse receipts by intervention of department of agriculture—authority of department—action on bond—attorney general and county attorneys to assist.
- 3-230. Special inspection of grain.
- 3-231. Sampling grain.
- 3-232. Examination of grain cars at destination—license of grain weighers.
- 3-232.1. Protein testing laboratory.
- 3-232.2. Protein test to be made of all wheat delivered to grain warehousemen—manner of making test—result—fee.
- 3-232.3. Penalty for violation.
- 3-233. Fees—disposition.
- 3-234 to 3-238. [Transferred from Title 94.]

**3-201. (3574) Definitions.** (1) The word “grain” includes flax.

(2) The term “public warehouse” includes any elevator, mill, warehouse, or structure in which grain is received from the public for storage, milling, shipment, or handling.

(3) The term “public warehouseman” includes every person, association, firm, and corporation owning, controlling, or operating any public warehouse in which grain is stored or handled in such a manner that the grain of various owners is mixed together and the identity of the different lots or parcels is not preserved.

(4) The term “grain dealer” includes every person, firm, association, and corporation owning, controlling, or operating a truck, tractor-trailer



unit, or warehouse, other than a public warehouse, and engaged in the business of buying grain for shipment or milling.

(5) The term "track buyer" includes every person, firm, association, and corporation which engages in the business of buying grain for shipment or milling and which does not own, control, or operate a warehouse or public warehouse.

(6) The terms "agent", "broker", and "commission man" include every person, association, firm, and corporation which engages in the business of negotiating sales or contracts for grain or of making sales or purchases for a commission.

**History:** En. Sec. 20, Ch. 216, L. 1921; re-en. Sec. 3574, R. C. M. 1921; amd. Sec. 1, Ch. 41, L. 1923; amd. Sec. 1, Ch. 154, L. 1929; amd. Sec. 1, Ch. 35, L. 1933; amd. Sec. 1, Ch. 224, L. 1961; amd. Sec. 1, Ch. 13, L. 1977.

#### Amendments

The 1977 amendment divided the section into subsections; and made minor changes in punctuation and phraseology.

### 3-202. (3575.2) Repealed.

#### Repeal

Section 3-202 (Sec. 2, Ch. 124, L. 1927; Sec. 2, Ch. 31, L. 1933; Sec. 2, Ch. 146, L. 1939; Sec. 1, Ch. 109, L. 1945; Sec. 1, Ch. 163, L. 1947; Sec. 1, Ch. 89, L. 1953; Sec.

1, Ch. 85, L. 1957; Sec. 1, Ch. 145, L. 1961), relating to fees to be paid to state sealer of weights and measures, was repealed by Sec. 43, Ch. 99, Laws 1969.

### 3-204. (3575.8) Repealed.

#### Repeal

Section 3-204 (En. as Sec. 7-A, Ch. 124, L. 1927, by Sec. 4, Ch. 31, L. 1933), relating to transfer of test weight calibra-

tion equipment to department of agriculture, was repealed by Sec. 173, Ch. 218, Laws 1974.

**3-205. (3576) Inspectors of grain—samplers and weighers—qualifications—interest.** The department shall provide inspectors, samplers, and weighers to enforce this chapter. At all inspection points designated by the department, the department shall provide sufficient inspectors and weighers to inspect and weigh all grain subject to state inspection under the supervision of the department. However, grain held in transit for inspection and diversion only need not be weighed. Inspectors shall be able to qualify under the terms and in accordance with the United States Grain Standards Act. Inspectors, samplers, and weighers may not be interested directly or indirectly in the handling, sorting, shipping, purchasing, or selling of grain or grain products.

**History:** En. Sec. 22, Ch. 216, L. 1921; re-en. Sec. 3576, R. C. M. 1921; amd. Sec. 2, Ch. 154, L. 1929; amd. Sec. 1, Ch. 7, L. 1957; amd. Sec. 10, Ch. 177, L. 1935; amd. Sec. 9, Ch. 218, L. 1974; amd. Sec. 2, Ch. 13, L. 1977.

#### Amendments

The 1974 amendment substituted "department" for "commissioner of agriculture," "commissioner," and "chief inspector" in the first and second sentences;

deleted "a chief inspector of grain for the state, who shall also serve as chief weigher of grain for the state, and such number of" in the first sentence after "provide"; deleted references to the chief inspector at the beginning of the last two sentences; and made minor changes in punctuation and phraseology.

The 1977 amendment deleted "Federal" before "Grain Standards Act" at the end of the fourth sentence; and made minor changes in punctuation and phraseology.

**3-207. (3578) Designation of inspection points — inspectors.** Cities and towns where grain is received in carload lots may be designated by the department as inspection points, and be provided with state inspection and weighing. Expenditures for the inspection and weighing at the points designated by the department may not exceed the receipts of fees at those points. The department may also assign inspectors to portions of the state it considers necessary. Inspectors shall inspect grain delivered in less than carload lots in the portions of the state to which they are assigned, shall furnish producers with an inspection which will enable them to determine the grade of their grain, and shall perform other duties the department prescribes.

History: En. Sec. 24, Ch. 216, L. 1921; re-en. Sec. 3578, R. C. M. 1921; amd. Sec. 10, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment substituted "de-

partment" for references to the commissioner of agriculture; substituted "inspectors" for "deputy inspectors"; and made minor changes in punctuation and phraseology.

**3-208. (3579) Charges of public warehousemen.** (1) Public warehousemen subject to this chapter, for the handling, cleaning, and storage of grain, may charge maximum rates as are adopted and published by the department.

(2) The department shall, on its own initiative, regularly review the rates established and, in addition, shall conduct such review within 30 days following receipt of a written request by any group representing at least 50 persons subject to the rules or rates.

(3) The schedule of regulations and rates for cleaning, handling, and storage shall be posted in a conspicuous place where grain is unloaded for cleaning, handling, or storage.

(4) Failure on the part of a public warehouseman to comply with this chapter renders the licenses of the warehouseman subject to revocation by the department.

History: En. Sec. 25, Ch. 216, L. 1921; re-en. Sec. 3579, R. C. M. 1921; amd. Sec. 3, Ch. 154, L. 1929; amd. Sec. 2, Ch. 35, L. 1933; amd. Sec. 1, Ch. 6, L. 1957; amd. Sec. 1, Ch. 196, L. 1974; amd. Sec. 11, Ch. 218, L. 1974; amd. Sec. 1, Ch. 302, L. 1975; amd. Sec. 1, Ch. 177, L. 1977.

#### Amendments

Chapter 196, Laws of 1974 substituted "handling, cleaning and storage of grain" for "handling or storage of grain" in the introductory paragraph of subsection (1); increased the charge specified in subdivision (1)(a) from four cents to six cents; increased the charges specified in subdivision (1)(b) from four cents for grains and five cents for flax to "not to exceed" six cents for grains and "not to exceed" seven cents for flax; increased the charge specified in subdivision (1)(c) from five cents to eight cents; reduced the charge specified in subdivision (1)(d) from one-thirtieth of one cent per bushel to one-twentieth

of one cent per bushel; substituted "less than two dollars and five cents (\$2.05) per bushel or any future target price" for "less than fifty cents (50¢) per bushel" at the end of subsection (2); and made various changes in phraseology.

Chapter 218, Laws of 1974, inserted the subsection designation (1) at the beginning of the section; redesignated subdivisions (e) and (f) as subsections (2) and (3); inserted the subsection designation (4) at the beginning of the final paragraph; substituted "this chapter" for "this act" in two places; substituted "department" for "commissioner of agriculture" at the end of subsection (4); and made minor changes in phraseology and punctuation.

The 1975 amendment increased the charge specified in subdivision (1)(a) from six cents to eight cents; increased the charges specified in subdivision (1)(b) from six cents to eight cents for grain, and from seven cents to ten cents

for flax; added "and delivery to owner" after "insuring" in subdivision (1)(b); increased cleaning charges in subdivision (1)(c) from eight cents to ten cents; inserted "except for seed cleaning" in subdivision (1)(c); deleted "or any future target price" at the end of subsection (2); designated the concluding paragraph as subsection (4); and made minor changes in phraseology and style.

The 1977 amendment substituted "may charge maximum rates as are adopted and published by the department" at the end of subsection (1) for a schedule of maxi-

mum rates; substituted subsection (2) for former provisions requiring that the maximum rates set out in subsection (1) be reduced by 25% when the price of wheat dropped below \$2.05 per bushel; substituted "regulations and rates" for "charges" in subsection (3); and added "handling, or storage" at the end of subsection (3).

#### Effective Date

Section 2 of Ch. 177, Laws 1977 provided the act should be effective on its passage and approval. Approved March 29, 1977.

### 3-209. (3580) Establishment of standard grain grades—procedure.

(1) The department shall establish standard grades to apply to all grain bought or handled by public warehouses in this state. The department shall adopt as state grade standards all grades for grain established by the United States department of agriculture. Standards for grain shall be established by the department after notice and a public hearing. Notice shall be published in three newspapers of the state at least 20 days before the hearing.

(2) Grade standards, or any alteration or modification of those standards which the department may establish, are not effective until 30 days after publication, except for grades established by the United States department of agriculture, which are effective 10 days after publication.

(3) The grain standards adopted by the department do not apply to grain contracted for before their effective date.

**History:** Enacted as part of Sec. 26, Ch. 216, L. 1921; re-en. Sec. 3580, R. C. M. 1921; amd. Sec. 12, Ch. 218, L. 1974; amd. Sec. 1, Ch. 43, L. 1977.

#### Amendments

The 1974 amendment substituted "department" for "commissioner of agriculture" in subsections (1) and (2); increased from ten to twenty days the notice period

in subsection (1); and made numerous changes in style, punctuation and phraseology.

The 1977 amendment substituted "until 30 days after publication" for "within 30 days after publication" in subsection (2); deleted subsection (4) which provided for fees and mileage for witnesses to be paid out of moneys deposited under section 3-233; and made minor changes in style.

**3-210. (3580) Rules governing dockage—sample inspection.** The department shall, after the hearing provided in 3-209, adopt rules governing the dockage which shall be made on inferior grades and in all executory contracts entered into after the hearing. The rules may not conflict with the terms of the United States Grain Standards Act. Where the price or amount to be paid depends on terminal weight or grade, the rules shall control the dockage insofar as it affects the price to be paid, and the rules become part of the contract of sale. The department shall also provide for sample inspection of grain, adopt rules governing sample inspections, and provide that the sample inspection when made is final.

**History:** Enacted as part of Sec. 26, Ch. 216, L. 1921; re-en. Sec. 3580, R. C. M. 1921; amd. Sec. 13, Ch. 218, L. 1974; amd. Sec. 3, Ch. 13, L. 1977.

#### Amendments

The 1974 amendment substituted "department" for "commissioner of agricul-

ture" in the first and last sentences; and made minor changes in punctuation and phraseology.

The 1977 amendment substituted "Grain Standards Act" at the end of the second sentence for "Federal Grain Standard Act"; and made minor changes in phraseology and style.



**3-211. (3580) Appointment of inspectors.** The department shall, during the grain-marketing season, appoint inspectors to visit the grain-growing districts for the purpose of investigating grain grading, dockage, and weighing, and enforcing the rules of the department.

**History:** Enacted as part of Sec. 26, Ch. 216, L. 1921; re-en. Sec. 3580, R. C. M. 1921; amd. Sec. 14, Ch. 218, L. 1974.

#### **Amendments**

The 1974 amendment substituted "department" at the beginning and end of

this section for "commissioner of agriculture" and "commissioner"; deleted a former first paragraph dealing with cleaning apparatus to remove dockage; and made minor changes in phraseology. For prior version see parent volume.

**3-212. (3580) Copies of grades and rules to be furnished warehousemen—display of them.** (1) The department shall, immediately after the establishment of grades and the adoption of rules fixing dockage, supply all public warehousemen with a copy of the grades and rules. A public warehouseman shall keep a copy on file in a convenient place in every warehouse. If an office is maintained in connection with the warehouse, a copy of the grades and rules shall be kept on file in the office. A placard notice shall be posted in a conspicuous place in every warehouse and office, reading: "A copy of Montana grades and rules is on file here for information of interested parties."

(2) A warehouseman shall exhibit a copy of the grades and rules to any interested party at any warehouse or office, and permit the interested party to examine the copy.

**History:** Enacted as part of Sec. 26, Ch. 216, L. 1921; re-en. Sec. 3580, R. C. M. 1921; amd. Sec. 15, Ch. 218, L. 1974.

#### **Amendments**

The 1974 amendment substituted "de-

partment" for "commissioner of agriculture" in subsection (1); and made minor changes in style, punctuation and phraseology.

**3-213. (3581) Fees for inspection, testing, and weighing grain.** The department shall fix the fees for inspection, testing, and weighing of grain. Those fees are a lien upon the grain until paid.

**History:** En. Sec. 27, Ch. 216, L. 1921; re-en. Sec. 3581, R. C. M. 1921; amd. Sec. 4, Ch. 154, L. 1929; amd. Sec. 16, Ch. 218, L. 1974.

#### **Amendments**

The 1974 amendment substituted "department" for "commissioner of agriculture"; inserted "testing" after "inspection"

in two places; deleted a second paragraph reading "No commercial laboratory for public service shall certify to the grade or protein content of grain unless such commercial laboratory is licensed by the commissioner of agriculture under such rules and regulations as he may prescribe"; and made minor changes in punctuation and phraseology.

**3-215. (3583) Removal of inspectors, samplers, or weighers for misconduct.** Upon written complaint filed with the department, charging an inspector, sampler, or weigher with official misconduct, inefficiency, incompetency, or neglect of duty, the department shall investigate the charges. If the charges are substantiated, the department shall remove that officer.

**History:** En. Sec. 29, Ch. 216, L. 1921; re-en. Sec. 3583, R. C. M. 1921; amd. Sec. 17, Ch. 218, L. 1974.

#### **Amendments**

The 1974 amendment substituted "department" for references to "commissioner of agriculture"; and made minor changes in punctuation and phraseology.

**3-216. (3584) Appeals to department—hearing and order.** (1) If an owner, consignee, or shipper of grain, or a warehouseman, disagrees with the grade given by the department, he may appeal to the department from the decision within ten (10) days from the date of certificate, by giving notice of appeal and paying a fee fixed by the department. The fee shall be refunded if the decision appealed from is sustained. The notice of appeal may be given by letter stating that the party appeals from the decision of the inspector and specifying the initials and numbers of the cars in which the grain was contained when inspected and graded.

(2) The appellant shall also file with the department a list containing the names and addresses of all parties interested in the subject matter. The department, upon receiving the notice and list of interested parties, shall immediately notify the parties interested of the time and place designated by it for a hearing. At the hearing, which shall be five (5) days from the date of receiving the notice, the department shall inquire into the reasonableness and correctness of the original grading. After the hearing, the department shall affirm or modify the grade as justified by the facts and evidence.

**History:** En. Sec. 30, Ch. 216, L. 1921; re-en. Sec. 3584, R. C. M. 1921; amd. Sec. 18, Ch. 218, L. 1974.

**Amendments**

The 1974 amendment substituted “de-

partment” for references to “commissioner of agriculture” throughout the section; and made numerous minor changes in style, punctuation and phraseology.

**3-217. (3585) Discrimination in charges by warehousemen prohibited.** A public warehouseman subject to this chapter may not directly or indirectly, by any special charge, rebate, drawback, or other device, demand, collect, or receive from any person a greater or lesser compensation for any service rendered in the handling or storage of grain, than he demands, collects, or receives from any other person for a similar and contemporaneous service, under substantially similar circumstances or conditions. A public warehouseman may not make or give any undue or unreasonable preference or advantage to any person, company, or corporation or subject any person, company, or corporation to any undue or unreasonable prejudice or disadvantage. A warehouseman who violates this section is guilty of a misdemeanor.

**History:** En. Sec. 25, Ch. 209, L. 1919; re-en. Sec. 3585, R. C. M. 1921; amd. Sec. 19, Ch. 218, L. 1974.

**Amendments**

The 1974 amendment made violation of the section a misdemeanor; and made minor changes in punctuation and phraseology.

**3-218. (3586) Duty of warehousemen to receive grain—warehouse receipt.** A public warehouseman shall receive for storage and shipment without discrimination of any kind, so far as the capacity of his warehouse will permit, all grain tendered him in the usual course of business in suitable conditions for storage. A warehouse receipt, in form prescribed by law and the rules of the department, shall be issued and delivered to the owner, or his representative, immediately upon receipt of the load or parcel of grain.

**History:** En. Sec. 26, Ch. 209, L. 1919; re-en. Sec. 31, Ch. 216, L. 1921; re-en. Sec. 3586, R. C. M. 1921; amd. Sec. 20, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "commissioner of agriculture"; and made minor changes in phraseology.

**3-220. (3588) Designation of grain delivered to warehouse.** In cases of grain being sold outright to the warehouseman at the time of delivery or grain placed in store with the warehouseman to be sold at a future time to the warehouseman to whom delivered, settlement shall be made on the basis of grade, quality, protein content, and quantity. In cases of storage of grain with intent of future redelivery of the grain, the owner must so designate at time of delivery to enable the warehouseman to special bin. Upon failure to so designate at time of delivery, the grain will lose its identity in general storage, whereupon the owner is obligated to accept quantity of like grade, kind and quality (as provided for under the United States Grain Standards Act) from the warehouseman's general storage.

**History:** En. Sec. 32, Ch. 216, L. 1921; re-en. Sec. 3588, R. C. M. 1921; amd. Sec. 3, Ch. 41, L. 1923; amd. Sec. 1, Ch. 174, L. 1925; amd. Sec. 5, Ch. 154, L. 1929; amd. Sec. 3, Ch. 35, L. 1933; amd. Sec. 4, Ch. 13, L. 1977.

#### Amendments

The 1977 amendment inserted "Upon" at

the beginning of the last sentence; substituted "whereupon the owner is obligated" in the last sentence for "therefore, owner agrees"; deleted "Federal" before "Grain Standards Act" in the last sentence; and made minor changes in punctuation and phraseology.

**3-221. (3588) Kind and quality of grain to be delivered on return of receipt.** Upon the return of the receipt to the proper warehouseman, properly endorsed, and upon payment or tender of all advances and legal charges, grain of the grade agreed upon and of equal quality or value and quantity equal to that placed by him in storage, shall be delivered to the holder of the receipt. Delivery shall be made within forty-eight (48) hours after the facilities for receiving the grain have been provided. At the option of the owner the warehouseman shall deliver the grain at terminal, or if mutually agreed, the equivalent market value of the grain on that date, less any freight and storage charges to terminal, and less other charges which may be allowed by the department. Owners of warehouse receipts surrendered for shipment shall furnish the warehouseman with written instructions regarding the capacity of cars to be ordered from the transportation company and the manner of loading and billing shipments made in the cars. The warehouseman shall load and bill all shipments in accordance with instructions given. The warehouseman is liable for the amount of excess freight paid and for other damages suffered by the owner of the warehouse receipt, resulting from failure to follow accurately the loading and billing instructions. The owner of the warehouse receipt shall immediately furnish the warehouseman a duplicate copy of the original state weighmaster's certificate of weight of the carlot shipment at terminal.

**History:** En. Sec. 32, Ch. 216, L. 1921; re-en. Sec. 3588, R. C. M. 1921; amd. Sec. 3, Ch. 41, L. 1923; amd. Sec. 1, Ch. 174,

L. 1925; amd. Sec. 5, Ch. 154, L. 1929; amd. Sec. 3, Ch. 35, L. 1933; amd. Sec. 21, Ch. 218, L. 1974.



**Amendments**

The 1974 amendment substituted "department" for "commissioner of agricul-

ture" at the end of the third sentence; and made minor changes in punctuation and phraseology.

**3-222. (3588) Dispute as to grade or dockage—laboratory test to be made.** If a dispute or disagreement arises between the party receiving and the party delivering the grain at any public warehouse in this state as to the proper grade or dockage of grain, in accordance with standards at terminal points, an agreed average sample of at least one quart of the grain in dispute may be taken by the parties interested, and forwarded in a suitable container marked for identification by the interested parties, mail or express charges prepaid, with the names and addresses of the parties, to the department. The department shall examine the grain and determine what grade the sample is entitled to under the inspection rules and which amount of dockage it contains. The findings of the inspection are binding upon both parties, subject to appeal, as provided in section 3-216. If the grain in question is damp, musty, or otherwise out of condition, this fact, with any other necessary information, must accompany the sample.

**History:** En. Sec. 32, Ch. 216, L. 1921; re-en. Sec. 3588, R. C. M. 1921; amd. Sec. 3, Ch. 41, L. 1923; amd. Sec. 1, Ch. 174, L. 1925; amd. Sec. 5, Ch. 154, L. 1929; amd. Sec. 3, Ch. 35, L. 1933; amd. Sec. 22, Ch. 218, L. 1974.

**Amendments**

The 1974 amendment substituted "de-

partment" for "chief grain inspector, Great Falls, Montana, or any state laboratory whose chief inspector has been qualified by the United States department of agriculture to grade grain, and make laboratory tests for protein"; and made minor changes in punctuation and phraseology.

**3-224. (3588) Termination of storage contract—sale of grain for charges.** Storage on any or all grain may be terminated by the owner at any time before the date mentioned herein by the payment or tender of all legal charges and the surrender of the warehouse receipt, together with a demand for delivery of such grain or notice to warehouseman to sell the same. In the absence of a demand for delivery, order to sell, or mutual agreement for the renewal of the storage contract entered into prior to the expiration of the storage contract, the warehouseman shall, upon the expiration of the storage contract, sell so much of such stored grain at the local market price on the close of business on that day as is sufficient to pay the accrued storage charges and shall thereupon issue new warehouse receipts for the balance of the grain to the owner thereof upon surrender by him of the original warehouse receipts. The warehouseman shall notify all warehouse receipt holders of the provisions of this section by June 1 of each year.

**History:** En. Sec. 32, Ch. 216, L. 1921; re-en. Sec. 3588, R. C. M. 1921; amd. Sec. 3, Ch. 41, L. 1923; amd. Sec. 1, Ch. 174, L. 1925; amd. Sec. 5, Ch. 154, L. 1929; amd. Sec. 3, Ch. 35, L. 1933; amd. Sec. 5, Ch. 13, L. 1977.

**Amendments**

The 1977 amendment substituted references to warehouse receipts throughout the section for references to storage re-

ceipts and tickets; deleted "as prescribed in this act" after "storage contract" in the second sentence; substituted the final sentence for a sentence reading "Provided, further, that it shall be the duty of the warehouseman on the first day of June of each year to notice all storage ticket holders at their last known address of the provisions of this act"; and made minor changes in punctuation and phraseology.

**3-225. (3588.1) Disposal of grain forbidden without notice to department of agriculture and compliance with law.** No warehouseman may sell or otherwise dispose of or deliver out of store, except to the owner, any stored grain, except upon notice in advance to the department of agriculture and after complying in full with the laws of the state and the regulations of the department relating to the handling of stored grain. Any person, firm, association, or corporation owning or operating more than one public warehouse in this state may deliver grain from one warehouse in settlement of warehouse receipts issued for grain stored in another warehouse when grain for storage has been presented at any warehouse in excess of its available storage capacity, provided that:

(1) this does not confer upon such warehouseman a right to make delivery of grain of substantially lower value than that delivered for store, though of the same technical grade, in settlement of warehouse receipts;

(2) such warehouseman shall at all times keep on hand in bonded warehouses grain of quality and quantity sufficient to settle all outstanding warehouse receipts; and

(3) freight and other charges shall be figured on the basis of the point of receipt.

**History:** En. Sec. 3588-A, R. C. M. 1921, by Sec. 4, Ch. 41, L. 1923; amd. Sec. 6, Ch. 13, L. 1977.

#### Amendments

The 1977 amendment substituted "may deliver grain" in the second sentence for

"shall be permitted to make delivery of wheat"; inserted the subdivision designations; substituted "warehouse receipts" for "storage receipts" in subdivision (2); and made minor changes in phraseology, punctuation and style.

**3-227. (3859) Reports—penalty for failure to report.** Every person licensed to merchandise grain shall make regular reports to the department, under oath, at intervals set by rule of the department, and on forms prepared by it. The reports shall show the total weight of each kind of grain received and shipped, the amount of outstanding warehouse receipts on that date, and a statement of the amount of grain on hand to cover them. The department may also require by rule special reports at any time. The department may inspect the business of every person licensed to merchandise grain, whenever considered proper. The books, accounts, records, papers, and proceedings of every person licensed to merchandise grain are at all times during business hours subject to inspection. A person who knowingly falsifies any of his reports to the department, who fails to make the reports when requested by the department, or who refuses or resists inspection is guilty of a misdemeanor and shall be fined not less than \$300 or more than \$500.

**History:** En. Sec. 33, Ch. 216, L. 1921; re-en. Sec. 3589, R. C. M. 1921; amd. Sec. 5, Ch. 41, L. 1923; amd. Sec. 2, Ch. 224, L. 1961; amd. Sec. 23, Ch. 218, L. 1974; amd. Sec. 7, Ch. 13, L. 1977; amd. Sec. 2, Ch. 43, L. 1977.

#### Compiler's Notes

This section was amended twice in 1977, once by Ch. 13 and once by Ch. 43. Since the amendments do not appear to conflict,

the code commissioner has made a composite section embodying the changes made by both amendments.

#### Amendments

The 1974 amendment substituted "department" for references to "commissioner of agriculture" throughout; and made minor changes in punctuation and phraseology.

Chapter 13, Laws of 1977, substituted

"warehouse receipts" for "storage receipts" near the middle of the second sentence; and made minor changes in phraseology, punctuation and style.

Chapter 43, Laws of 1977, substituted "Every person licensed to merchandise grain" at the beginning of the section for "On June 30 of each year every warehouseman, track buyer, and grain dealer"; inserted "at intervals set by rule of the department, and" near the end of the first sentence; deleted references to warehouse-

men, track buyers, and licensed grain dealers in the second and third sentences; inserted "by rule" before "special reports" in the third sentence; substituted "person licensed to merchandise grain" in the fourth and fifth sentences for "warehouseman, track buyer, and grain dealer"; deleted "and the method of conducting the business" before "whenever" in the fourth sentence; and made minor changes in phraseology, punctuation and style.

### 3-228. (3589) Repealed.

#### Repeal

Section 3-228 (Sec. 33, Ch. 216, L. 1921; Sec. 5, Ch. 41, L. 1923; Sec. 1, Ch. 145, L. 1959; Sec. 3, Ch. 224, L. 1961; Sec. 1, Ch. 27, L. 1963; Sec. 1, Ch. 412, L. 1971),

relating to bonds and licensing of warehouseman, track buyers, grain dealers, and elevator operators, was repealed by Sec. 9, Ch. 39, Laws 1973. For new law, see secs. 3-228.1 to 3-228.7.

**3-228.1. Definitions.** Unless the context requires otherwise, as used in this act:

(1) "Person" means any person, merchandiser, grain dealer, firm, public warehouseman, commercial feed lot operator, trucker, exchange, broker, partnership, corporation, organization, commissionman, trust, association of persons, track buyer, shipper, hauler, contractor, cash buyer, unincorporated association, municipality, or society, however formed.

(2) "Grain" includes the natural products of the farm including flax.

(3) "Haul" means to transport grain or farm products by any vehicle on land or on water.

(4) "Merchandise" means to store, sell, buy, haul, ship, contract, cause a contract to be let, trade, carry on commerce, traffic, aid and distribute, abet in the movement of any commodity, and assemble and distribute farm products or grain.

(5) "For hire" means for remuneration of any kind, paid or promised either directly or indirectly, or received or obtained through leasing, brokering, or buy-and-sell arrangements whereby a remuneration is obtained or derived for transportation service. Transportation by a person not in the transportation business is not a service for hire, even though the person owning the property transported shares in the cost or pays for the movement.

(6) "Department" means department of agriculture.

**History:** En. Sec. 1, Ch. 39, L. 1973; amd. Sec. 3, Ch. 43, L. 1977.

#### Title of Act

An act to provide for the licensing and bonding of merchandisers of grain; and repealing section 3-228, R. C. M. 1947.

#### Amendments

The 1977 amendment inserted "store" after "'Merchandise' means to" in subsection (4); and made a minor change in phraseology.

**3-228.2. Licensing of grain merchandisers—fees—exemptions.** (1) A person may not merchandise grain without obtaining a license under this act and without obtaining a certificate of authority if that certificate is required under 15-2363.



(2) Licenses to engage in the business of merchandising of grains shall be issued by the department to reputable persons who apply in writing, submit the scheduled fee, and set forth under oath the place where the applicant intends to carry on the business for which the license is desired. A separate license is required for each place of business and for each truck or tractor-trailer unit where or in which grain is merchandised. Each vehicle or vessel used shall be noted on the application.

(3) A person merchandising grain shall before July 1 pay the department a minimum license fee of \$15 for each year or part of a year, for each place of business and for each truck or tractor-trailer unit owned, operated, or conducted by that person where or in which grain is merchandised. The department may by rule establish the license fees, which may be graduated according to the volume of business conducted by a licensee and which shall bear a reasonable relationship to the cost of administering this act and section 3-229.

(4) All license fees shall be transmitted to the state treasurer, and shall be deposited in the general fund.

(5) All licenses expire on June 30 of each year.

(6) A person is exempt from the licensing requirement of this section if he:

(a) is a producer or a feed lot operator within Montana who buys and hauls grain for his own use, in his own vehicle, for his own livestock or his farm;

(b) hauls grain for hire, does not acquire title, and is hauling from an elevator or public warehouse previously licensed;

(c) hauls grain for hire for a producer or feed lot operator for the producer's or feed lot operator's own use within Montana, and does not acquire title to the grain;

(d) is a custom combiner hauling grain that he himself combines.

**History:** En. Sec. 2, Ch. 39, L. 1973; am. Sec. 4, Ch. 43, L. 1977.

#### Amendments

The 1977 amendment added "and for each truck or tractor-trailer unit where or in which grain is merchandised" at the end of the second sentence of subsection (2); inserted "and for each truck or trac-

tor-trailer unit" in the first sentence of subsection (3); added "where or in which grain is merchandised" at the end of the first sentence of subsection (3); substituted "livestock" for "feed lot" near the end of subdivision (6)(a); and made minor changes in phraseology, punctuation and style.

**3-228.3. Suspension or revocation of license.** (1) The department may, after notice and an opportunity for a hearing in accordance with the Montana Administrative Procedure Act have been afforded to the licensee, suspend or revoke a license if the licensee has failed to comply with this act or rules of the department, or if the licensee has:

(a) violated this act or 3-229;

(b) been found guilty of dishonesty, burglary, theft, or any other offense defined in Title 94, chapter 6, part 3;

(c) failed or refused to furnish information, records, or reports required by statute or rule.

(2) The department may, in accordance with the Montana Administrative Procedure Act, summarily suspend a license where the public health, safety, or welfare imperatively requires emergency action.

History: En. Sec. 3, Ch. 39, L. 1973; amd. Sec. 41, Ch. 359, L. 1977.

#### Amendments

The 1977 amendment substituted "dishonesty, burglary, theft, or any other of-

fense defined in Title 94, chapter 6, part 3" in subdivision (1)(b) for "fraud, deceit, dishonesty, forgery, burglary, or larceny"; and made minor changes in phraseology and style.

**3-228.4. Appointment of agent to receive process by nonresident licensee.** A nonresident applying for a license shall file a written power of attorney designating the secretary of state as the agent of the nonresident upon whom service of process may be had in the event of any legal action against the nonresident. A nonresident who has a duly appointed resident agent upon whom legal process may be served as provided by law is not required to designate the secretary of state as his agent for service of process. The department shall be furnished a copy of the designation of the resident agent, which copy shall be certified by the secretary of state.

History: En. Sec. 4, Ch. 39, L. 1973.

**3-228.5. Bond filed before issuance or renewal of license.** (1) Before a license is issued or renewed the applicant or licensee shall file with the department a bond in an amount the department prescribes, but not less than fifteen thousand dollars (\$15,000). The bond shall:

(a) cover the period of one (1) license year or any part of the license year;

(b) be executed by a corporate surety authorized to do business in the state and be conditioned upon the faithful performance of the acts and duties required by section 3-229;

(c) be filed with the department before July 1 each year on a form prescribed by the department.

(2) The department may require an additional bond, if the grain business conducted warrants an increase, which shall cover all transactions of merchandising grains.

(3) A person injured by breach of an obligation, for which a bond is given to the department, may take action against the bond in his own name to recover damages caused by the breach.

(4) Liability of the surety upon the bond is limited to the amount of the bond. However, if two (2) or more persons are injured by breach of the obligations for which the bond is given and the damages for violating the conditions of the bond exceed the specified amount of the bond, the recovery on the bond shall be prorated by the surety among all of those injured.

(5) All bonds expire on June 30 each year.

History: En. Sec. 5, Ch. 39, L. 1973.

**3-228.6. Insurance required of warehouseman.** In addition to the bond and license, a public warehouseman shall obtain and maintain insurance

approved by the department as adequate to protect the holders of warehouse receipts from loss. A license shall not be issued to a public warehouseman or may be revoked, if the public warehouseman fails to comply with this insurance requirement.

**History:** En. Sec. 6, Ch. 39, L. 1973.

**3-228.7. Violation as misdemeanor.** A person who violates this act is guilty of misdemeanor and shall be fined not less than three hundred dollars (\$300) nor more than five hundred dollars (\$500). Each day of violation is a separate offense.

**History:** En. Sec. 7, Ch. 39, L. 1973.

valid parts that are severable from the invalid part remain in effect."

**Separability Clause**

Section 8 of Ch. 39, Laws 1973 read "If any part of this act is invalid, all

**Repealing Clause**

Section 9 of Ch. 39, Laws 1973 read "Section 3-228, R. C. M. 1947, is repealed."

**3-228.8. Injunctive remedy.** The merchandising of grain by any person without the license or bond required by this chapter may be enjoined by the district court on petition of the department. If the respondent is found to have engaged in the merchandising of grain without a license or bond, the court shall enjoin him from further merchandising of grain until he has been duly licensed and bonded. However, it shall not be necessary for the department to show that any individual has been injured by the actions complained of in order to issue the injunction. The procedure for injunctive relief under this act shall be the same as any other action for an injunction pursuant to Title 93, chapter 42, R. C. M. 1947. The injunction provided by this section is deemed to be an additional remedy to the criminal prosecution and punishment provided in chapter 2, Title 3, R. C. M. 1947.

**History:** En. 3-228.8 by Sec. 1, Ch. 86, L. 1974.

for the department of agriculture to enjoin persons merchandising in grain without a license or bond.

**Title of Act**

An act providing an injunctive remedy

**3-229. (3589.1) Protection of holders of warehouse receipts by intervention of department of agriculture—authority of department—action on bond—attorney general and county attorneys to assist.** When a warehouseman, grain dealer, track buyer, broker, agent, or commission man cannot, or where there is a probability that he will not, meet in full all storage obligations or other obligations resulting from the delivery of grain, the department shall intervene in the interests of the holders of warehouse receipts or other evidences of delivery of grain for which payment has not been made. The department may protect the interests of the holders of warehouse receipts or other evidences of the delivery of grain for which payment has not been made. When examination by the department discloses that it is impossible for a warehouseman, grain dealer, track buyer, broker, agent, or commission man to settle in full for all outstanding warehouse receipts or other evidences of delivery of grain for which payment has not been made, without recourse to the bond



filed by the warehouseman, grain dealer, track buyer, broker, agent, or commission man, the department for the benefit of holders of unpaid warehouse receipts or other evidences of delivery for which payment has not been made, shall demand payment of its undertaking by the surety on the bond in an amount necessary for full settlement of warehouse receipts or other evidences of delivery for which payment has not been made. The attorney general or any county attorney of this state shall represent the department in a necessary action against a bond when facts constituting grounds for action are presented to him by the department.

**History:** En. Sec. 3589-A, R. C. M. 1921, by Sec. 6, Ch. 41, L. 1923; amd. Sec. 1, Ch. 42, L. 1925; amd. Sec. 24, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment made minor changes in punctuation and phraseology.

**3-230. (3590) Special inspection of grain.** (1) If grain is sold for delivery on Montana grade to be shipped from places not provided with state inspection under this chapter, the buyer, seller, or person making the delivery may have it inspected by notifying an inspector who shall have the grain inspected, and after inspection issue on request of the buyer, seller, or person delivering it an inspector's certificate showing the grade of the grain. The person or persons calling for the inspection shall pay a reasonable fee fixed by the department.

(2) Grain that is shipped to points in this state where no inspection is maintained may be inspected on request of either the buyer or seller, and a certificate may be issued showing the grade of the grain. The charge for the service shall at least equal the entire cost of it, and shall be paid by the party calling for the inspection.

**History:** En. Sec. 34, Ch. 216, L. 1921; re-en. Sec. 3590, R. C. M. 1921; amd. Sec. 25, Ch. 218, L. 1974.

partment" at the end of subsection (1) for "commissioner of agriculture"; and made minor changes in style, punctuation and phraseology.

#### Amendments

The 1974 amendment substituted "de-

**3-231. (3591) Sampling grain.** Samples may be drawn from all grain shipped to terminal warehouses and from all grain inspected or weighed. The samples are the property of the state, subject to disposition by the department, under rules prescribed by the department.

**History:** En. Sec. 35, Ch. 216, L. 1921; re-en. Sec. 3591, R. C. M. 1921; amd. Sec. 26, Ch. 218, L. 1974.

to "commissioner of agriculture"; deleted a second paragraph dealing with the commissioner's duty to furnish grain samples; and made minor changes in phraseology and punctuation. For prior version see parent volume.

#### Amendments

The 1974 amendment substituted "department" in two places for references

**3-232. (3592) Examination of grain cars at destination—license of grain weighers.** (1) An inspector, sampler, or weigher, before opening the doors of a car containing grain, upon its arrival at any of the places designated by the department for inspection, shall first ascertain the condition of the car and determine whether any leakages have occurred while the car was in transit, shall determine whether the doors were proper-

ly secured and sealed at the point of shipment, and shall make a record of those facts in all cases, giving seal numbers.

(2) After examinations have been made, the state officials shall securely close and reseal doors opened by them, using the special seal of the department.

(3) A record of all original seals broken by those officials, the date when broken, and the number of the seals shall be made by them. An inspector, weigher, or sampler shall break the seal, weigh, and superintend the loading of all cars of grain subject to inspection. It is unlawful for any other person to break the seal or weigh the cars of grain.

(4) The department may require persons, firms, corporations, or warehousemen engaged in weighing grain in this state to obtain a license, and may adopt rules governing the application for and the issuance of the licenses. A fee may not be charged for a license. A person, firm, corporation, or warehouseman who weighs grain without first obtaining a license is guilty of a misdemeanor and shall be fined not less than twenty-five dollars (\$25) nor more than two hundred dollars (\$200).

History: En. Sec. 36, Ch. 216, L. 1921; re-en. Sec. 3592, R. C. M. 1921; amd. Sec. 27, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment substituted references to "department" throughout the section for references to "commissioner of agriculture"; deleted a final paragraph

reading "All fees, licenses, and other charges collected under the provisions of this act shall be, by the person collecting the same, paid to the state treasurer of the state of Montana, and by said treasurer placed in the general fund"; and made minor changes in style, punctuation and phraseology.

**3-232.1. Protein testing laboratory.** (1) The department shall maintain a protein testing laboratory.

(2) No other laboratory may certify to the grade or protein content of grain unless the laboratory is licensed by the department under rules adopted by the department.

(3) The department shall, by rule, determine the standard of analysis, controlling all other protein testing laboratories in this state.

(4) The department may, by rule, determine the form of protein certificates issued by it.

History: En. 3-232.1 by Sec. 28, Ch. 218, L. 1974.

**3-232.2. Protein test to be made of all wheat delivered to grain warehousemen—manner of making test—result—fee.** (1) Each public warehouseman shall take a sample from each load of wheat delivered to his warehouse and preserve the sample in a moisture-proof container with the owner's name on it. As hauling is completed by each owner the several samples taken from all the loads of that one owner shall be mixed thoroughly, except that high, medium, or low protein wheat from the same owner or wheat of different types, varieties, or grades shall be segregated and separate containers provided for each. A one-pint portion of the composite sample shall be submitted to the department and the balance shall be held in the owner's container. If either the warehouseman or owner is dissatisfied he may appeal to the department.



(2) In case of an appeal a one-pint portion of the remainder of the owner's sample shall again be submitted to the department with a statement of facts of the appeal and a final test in duplicate shall be made by the department. The department's certificate of the test is final and binding upon both parties in establishing the basis of the price paid by the warehouseman. A fee commensurate with the cost of each protein test shall be made, to be deducted and paid at the time of final settlement. Upon written request of the owner, no protein test need be made upon the owner's wheat.

History: En. Sec. 1, Ch. 160, L. 1935; amd. Sec. 1, Ch. 379, L. 1973; Sec. 3-512, R. C. M. 1947; amd. and redes. 3-232.2 by Sec. 30, Ch. 218, L. 1974.

#### Amendments

The 1973 amendment deleted "Harlowton, or Bozeman" following "Great Falls" in the third sentence of the first paragraph; and substituted "commensurate with the cost of" for "of fifty cents

(\$0.50), for" and "shall" for "may" in the last sentence of the second paragraph.

The 1974 amendment renumbered this section; substituted "department" for references to "state grain laboratory" throughout the section; substituted the reference to a fee commensurate with cost in subsection (2) for a reference to a fee of fifty cents per test; and made minor changes in style, punctuation and phraseology.

**3-232.3. Penalty for violation.** A person violating section 3-232.2 is guilty of a misdemeanor and shall be fined not less than three hundred dollars (\$300) nor more than five hundred dollars (\$500) for each offense.

History: En. Sec. 2, Ch. 160, L. 1935; Sec. 3-513, R. C. M. 1947; amd. and redes. 3-232.3 by Sec. 31, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment renumbered this section, and made minor changes in phraseology.

**3-233. Fees—disposition.** (1) All fees and other charges fixed by the department, including fees for the inspection, grading, weighing, and protein-testing of grain, shall be kept as near the actual cost of the services as possible. All those fees and charges shall be paid to the department and deposited with the state treasurer. The state treasurer shall place all the fees and charges in the earmarked revenue fund. Fees deposited in the earmarked revenue fund may be used to pay claims for expense incurred in inspecting, grading, weighing, and protein-testing of grain, when the claims have been approved as provided by law.

(2) The department may direct the board of investments to invest funds from the earmarked revenue fund pursuant to the provisions of the unified investment program for state funds. The income from such investments shall be credited to the proper department account in the earmarked revenue fund.

History: En. Sec. 1, Ch. 203, L. 1957; amd. Sec. 27, Ch. 147, L. 1963; amd. Sec. 1, Ch. 70, L. 1973; amd. Sec. 29, Ch. 218, L. 1974; amd. Sec. 4, Ch. 16, L. 1977.

#### Amendments

The 1973 amendment substituted "department" for "commissioner of agriculture" throughout the section; deleted from the third sentence a provision for placement of 5% of the fees and charges in

the general fund; and made minor changes in style.

The 1974 amendment deleted a last sentence reading "No funds of the state shall be used by the department in carrying out such services, except moneys presently appropriated"; and made minor changes in punctuation and phraseology.

The 1977 amendment designated the existing section as subsection (1); and added subsection (2).



**3-234 to 3-238. [Transferred from Title 94.]****Compiler's Notes**

These sections were originally numbered 94-35-270 to 94-35-271.3. Section 29, Ch. 513, Laws of 1973, renumbered them to appear in this title. Because there has been no change in text, the sections are not reprinted here but may be found in bound Volume Eight as follows:

<b>New Sec.</b>	<b>Vol. 8</b>
3-234	94-35-270
3-235	94-35-271
3-236	94-35-271.1
3-237	94-35-271.2
3-238	94-35-271.3

**CHAPTER 3—SEED DEALERS, PROCESSORS AND WAREHOUSEMEN****Section**

- 3-310. Definitions.
- 3-311. Licensing—issuance—application—fee—bonding—insurance.
- 3-312. Screenings—restrictions on movements.
- 3-313. Dealer's license—exception—fee—application—violation.
- 3-314. Violations.
- 3-315. Rules—promulgated by department.
- 3-316. Cancellation of license—misdemeanor—enforcement proceedings.
- 3-317. Deposit of funds.

**3-301 to 3-309. (3592.1 to 3592.9) Repealed.**

**Repeal** Sections 3-301 to 3-309 (Secs. 1 to 9, 1973. For new law see secs. 3-310 to 3-317.

Ch. 50, L. 1927; Secs. 1 to 3, Ch. 158, L. 1951), relating to seed warehousemen, 173, Ch. 218, Laws of 1974. Section 3-304 was also repealed by Sec. 173, Ch. 218, Laws of 1974.

**3-310. Definitions.** When used in this act the following definitions apply:

- (1) "Department" means the department of agriculture.
- (2) "Agricultural seed" means the seeds of grass, forage, cereal, and fiber crops and any other kinds of seeds commonly recognized within this state as agricultural seeds and includes lawn seeds and mixtures of seeds.
- (3) "Montana certified seed grower" means a member of an authorized Montana seed certifying agency who has consented to produce seed under the rules for certified classes of seed, with respect to the maintenance of genetic purity and variety identity, set forth by the certifying agency.
- (4) "Person" means any individual, firm, partnership, corporation, or association.
- (5) "Public agricultural seed warehouse" means any warehouse or structure in which agricultural seed is received from the public for storage, assembling, or cleaning.
- (6) "Screening" means chaff, sterile florets, immature seed, weed seed, inert matter, and any other materials removed from seed by any kind of cleaning or processing.
- (7) "Seed buyer" means any person engaged in the business of buying agricultural seed for shipment, cleaning, processing, or resale and who does not own, control, or operate a public agricultural seed warehouse. Any individual employed by a "seed buyer" is not included in this term.
- (8) "Seed dealer" means any person who offers for sale, sells, or barter agricultural seeds to the ultimate consumer.

(9) "Seed labeler" means any person affixing labels to agricultural seeds with his name and address listed as required in 3-802.2 when such seed is distributed in Montana.

(10) "Seed processing plant" means any place of business that repackages, cleans, blends, treats, or otherwise manipulates agricultural seeds.

(11) "Seed warehouseman" means any person owning, controlling, or operating a public agricultural seed warehouse.

(12) Bin-run seed sales from one farmer to another farmer mean buyer beware.

History: En. Sec. 1, Ch. 442, L. 1973; amd. Sec. 1, Ch. 315, L. 1977.

weed seed; and repealing sections 3-301 through 3-309, R. C. M. 1947.

#### Title of Act

An act providing for regulation of the various phases of the marketing and distribution of agricultural seeds intended for propagation purpose and restricting the methods of disposition of screenings that contain viable prohibited noxious

#### Amendments

The 1977 amendment substituted "produce seed" in subdivision (3) for "increase seed"; deleted "and are exempt from this act" at the end of subdivision (12); and made minor changes in phraseology, punctuation and style.

**3-311. Licensing — issuance — application — fee — bonding — insurance.** (1) All seed processing plants, seed labelers, seed buyers, and public agricultural seed warehouses shall obtain a license from the department before doing business in this state; however, a Montana certified seed grower, when processing or labeling certified seed from his own production is not required to be licensed under this section. Bin-run seed sales from one farmer to another are exempt from this chapter.

(2) All licenses are issued on a fiscal-year basis and expire on June 30 of each year. A license may cover any or as many as all four activities: processing plant, seed labeler, seed buyer, and public agricultural seed warehouse.

(3) Application for license is made in a manner and on forms provided by the department. A nonresident shall file a written power of attorney designating the secretary of state as his agent, and the power of attorney shall be so prepared and in such form as to render effective the jurisdiction of the courts of the state of Montana over the nonresident applicant. A nonresident who has a duly appointed resident agent upon whom process may be serviced as provided by law is not required to designate the secretary of state as his agent. The department shall be furnished with a certified copy of the designation of the secretary of state or of a resident agent.

(4) The department may establish by rule minimum standards for equipment and handling procedures for facilities to be licensed and may carry out inspections during normal business hours to determine that these standards are being adhered to.

(5) Each license shall cost no more than \$50 a year. The department may by rule establish license fees which bear a reasonable relationship to the cost of administering this chapter.

(6) Failure on the part of a licensee to comply with the rules issued under the authority of this section is sufficient cause for cancellation of a license by the department, provided the licensee is given a reasonable opportunity to correct inadvertent and nonrecurring deficiencies.

(7) The department may by rule establish bonding and insurance requirements for each class of license.

History: En. Sec. 2, Ch. 442, L. 1973; amd. Sec. 2, Ch. 315, L. 1977.

#### Amendments

The 1977 amendment added the last sen-

tence of subsection (1); substituted subsection (5) for "Each license costs twenty-five dollars (\$25) per year"; and made minor changes in phraseology, punctuation and style.

**3-312. Screenings—restrictions on movements.** All screenings whether from seed processing plants or other sources represent both a valuable and potentially hazardous product. Their movements are restricted as follows:

(1) The viability of prohibited noxious weed seed as defined in section 3-802.1(4)(b) shall be destroyed before screenings are utilized in feed or in any other way in which they may propagate their kind. However, if these screenings are sold for feed, it shall be the responsibility of the feed buyer to haul under a tarp cover or other tight container until the provisions of this act are met.

(2) The department has authority to issue rules to restrict or exempt from restriction the holding and movement of screenings when the public interest is served by so doing.

History: En. Sec. 3, Ch. 427, L. 1973.

#### **3-313. Dealer's license — exception — fee — application — violation.**

(1) No person may distribute seed without obtaining a dealer's license from the department for each place of business. No license is required of a person who distributes seeds only in sealed packages of less than 10 pounds, packed by a licensed seed labeler and bearing his name and address. Each dealer's license shall cost no more than \$20 a year and expires on June 30 of each year. The department may by rule establish license fees which bear a reasonable relationship to the cost of administering this chapter. Any licensed processing plant, seed labeler, seed buyer, or public agricultural seed warehouse may obtain a dealer's license without additional fee.

(2) Application for a dealer's license shall be made in a manner and on forms provided by the department. Such forms shall require among other things the name of a person domiciled in this state authorized to receive and accept service or legal notices of all kinds.

(3) Violation of provisions of this section or the distribution of agricultural seeds not legally labeled constitutes adequate grounds for cancelling a license or denying a license to a dealer.

History: En. Sec. 4, Ch. 442, L. 1973; amd. Sec. 3, Ch. 315, L. 1977.

#### Amendments

The 1977 amendment substituted "10 pounds" in the second sentence of subsection (1) for "one (1) pound"; substituted

"shall cost no more than \$20 a year" in the third sentence of subsection (1) for "costs ten dollars. (\$10) per year"; inserted the fourth sentence of subsection (1); and made minor changes in phraseology.

**3-314. Violations.** The following acts caused within the state of Montana are prohibited:



(1) The failure or refusal to obtain a license as required in sections 2 and 4 [3-311 and 3-313] of this act.

(2) The misbranding or mislabeling of agricultural seeds.

(3) The violation or failure to comply with rules issued under the authority of this act.

**History:** En. Sec. 5, Ch. 442, L. 1973.

**3-315. Rules—promulgated by department.** The department is authorized to promulgate necessary rules as authorized by this act. All rules are promulgated in accordance with procedures as set forth in the Montana Administrative Procedure Act [82-4201 to 82-4225].

**History:** En. Sec. 6, Ch. 442, L. 1973.

**3-316. Cancellation of license—misdemeanor—enforcement proceedings.**

(1) The department may cancel any license issued by it when the provisions of this act have been violated by the holder of the license.

(2) Any person convicted of violating the provisions of this act or rules promulgated under the authority of this act is guilty of a misdemeanor and shall be fined not less than \$100 or more than \$300 for the first violation and not less than \$500 or more than \$1,000 for each subsequent violation.

(3) Nothing in this act shall be construed as requiring the department or its representatives to report violations of this act when it believes that the public interest will be best served by a suitable notice of warning.

(4) It is the duty of each county attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

(5) The department is authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this act or any rule promulgated under this act notwithstanding the existence of other remedies at law. An injunction is issued without bond.

(6) Any person adversely affected by an act, order, or ruling made pursuant to the provisions of this act may within 30 days bring action in the district court of the county or any county where the alleged violation occurred for trial of the issues bearing upon such act.

**History:** En. Sec. 7, Ch. 442, L. 1973;      **Amendments**  
amd. Sec. 4, Ch. 315, L. 1977.

The 1977 amendment made minor changes in phraseology, punctuation and style.

**3-317. Deposit of funds.** All money collected under the provisions of this act shall be deposited to the general fund.

**History:** En. Sec. 8, Ch. 442, L. 1973.

**Repealing Clause**

Section 9 of ch. 442, Laws 1973 read

"Sections 3-301, 3-302, 3-303, 3-304, 3-305, 3-306, 3-307, 3-308, and 3-309, R. C. M. 1947, are repealed."

# CHAPTER 4—FARM STORAGE OF GRAIN AS BASIS FOR FARM CREDIT— INSPECTION AND CERTIFICATION

## 3-401 to 3-406. (3592.10, 3592.11, 3592.13 to 3592.16) Repealed.

### Repeal

Sections 3-401 to 3-406 (Secs. 1, 2, 4 to 7, Ch. 27, L. 1929; Sec. 1, Ch. 96, L. 1931),

relating to farm storage commissioners and grain inspectors, were repealed by Sec. 173, Ch. 218, Laws 1974.

## 3-408 to 3-420. (3592.18 to 3592.30) Repealed.

### Repeal

Sections 3-408 to 3-420 (Secs. 9 to 21, Ch. 27, L. 1929; Secs. 2 to 5, Ch. 96, L. 1931; Secs. 28, 29, Ch. 147, L. 1963), re-

lating to farm storage of grain as farm credit basis, and inspection and certification procedures, were repealed by Sec. 173, Ch. 218, Laws 1974.

# CHAPTER 5—PROTEIN TESTING OF GRAIN

### Section

3-512, 3-513. [Transferred.]

## 3-501 to 3-511. (3592.31 to 3592.41) Repealed.

### Repeal

Sections 3-501 to 3-511 (Secs. 1 to 11, Ch. 111, L. 1931; Sec. 30, Ch. 147, L. 1963),

relating to protein testing of grain, were repealed by Sec. 173, Ch. 218, Laws 1974.

## 3-512, 3-513. [Transferred.]

### Compiler's Notes

Sections 30 and 31, Ch. 218, Laws of

1974 renumbered these sections as secs. 3-232.2 and 3-232.3.

# CHAPTER 6—FARM STORAGE PUBLIC WAREHOUSEMEN

## 3-601 to 3-610. (3592.44 to 3592.53) Repealed.

### Repeal

Sections 3-601 to 3-610 (Secs. 1 to 10, Ch. 174, L. 1931; Sec. 31, Ch. 147, L. 1963),

relating to farm storage public warehousemen, were repealed by Sec. 173, Ch. 218, Laws 1974.

# CHAPTER 7—BEAN WAREHOUSEMEN

### Section

3-702. Definitions.

3-704. License required of persons warehousing beans—fee—disposal of moneys— expiration date.

3-705. Form of application for license—qualifications—appeal on refusal.

3-706. Bond of applicant—conditions—fire insurance.

3-708. Fee for inspecting warehouse.

3-709. Records of bean dealer—inspection—receipt.

3-710. Rules to be adopted by department.

3-712. Storage constitutes bailment—duty to keep beans in storage.

3-713. Records of warehousemen—reports.

3-714. Enforcement—investigations—hearings—orders of department—appeals.

## 3-701. (3592.54) Repealed.

### Repeal

Section 3-701 (Sec. 1, Ch. 164, L. 1935), relating to administration and enforcement

of bean warehousemen provisions by commissioner of agriculture, was repealed by Sec. 173, Ch. 218, Laws 1974.

**3-702. Definitions.** Unless the context requires otherwise, as used in sections 3-702 through 3-715:

(1) "Warehouseman" or "person" means a dealer, shipper (except grower), society, association, organization, corporation, or their agents or representatives.

(2) "Beans" means all varieties of the bean family (except green beans) whether grown or purchased for seed, feed, or human consumption.

(3) "Storage" or "warehousing" means any method by which beans are held for any party, other than direct ownership, by the party storing the beans.

**History:** En. Sec. 2, Ch. 164, L. 1935; amd. Sec. 32, Ch. 218, L. 1974.

**Amendments**

The 1974 amendment deleted a subdivi-

sion defining "commissioner" as "the commissioner of agriculture of the Montana department of agriculture"; and made minor changes in style, punctuation and phraseology.

**3-704. (3592.57) License required of persons warehousing beans—fee—disposal of moneys—expiration date.** A person in the business of buying and selling at wholesale or warehousing and storing beans, or receiving or soliciting beans for purchase, sale, or storage, within or outside this state shall, before engaging in the business, obtain a license from the department of agriculture and pay a license fee to the department of fifteen dollars (\$15). The license fee shall be deposited with the state treasurer and credited to the general fund. Licenses shall be renewed annually and the prescribed fee paid annually. All licenses shall be issued for the fiscal year ending June 30 or a fraction of the fiscal year.

**History:** En. Sec. 4, Ch. 164, L. 1935; amd. Sec. 32, Ch. 147, L. 1963; amd. Sec. 33, Ch. 218, L. 1974.

**Amendments**

The 1974 amendment substituted the

department of agriculture for the commissioner as the source of the license; and made minor changes in punctuation and phraseology.

**3-705. (3592.58) Form of application for license—qualifications—appeal on refusal.** The department shall prescribe forms for application for licenses and shall require from the applicant the information it considers necessary. The applicant must satisfy the department as to his qualifications, warehouse and storage facilities, experience, and financial ability to carry on the business of buying, selling, warehousing and storing. Upon furnishing the evidence, the department shall grant or refuse a license. If a license is refused by the department, appeal may be made in accordance with sections 3-3304 and 3-3308.

**History:** En. Sec. 5, Ch. 164, L. 1935; amd. Sec. 34, Ch. 218, L. 1974.

**Amendments**

The 1974 amendment substituted "department" for "commissioner" throughout;

substituted "sections 3-3304 and 3-3308" at the end of the section for "sections 84-3405, 84-3409, 84-3410, 84-3411 and 84-3412"; and made minor changes in punctuation and phraseology.

**3-706. (3592.59) Bond of applicant—conditions—fire insurance.** A person applying for a license to engage in the business of buying, selling, warehousing, or storing beans in accordance with this act shall,



file with the department a surety bond of five thousand dollars (\$5,000). The bond shall be executed by a responsible surety company licensed to do business in this state and shall be approved by the department. The bond shall be conditioned upon the faithful performance of the applicant's obligations as a bean dealer or warehouseman under the laws of this state and of additional obligations assumed by him under contract with the respective depositors of the beans with him. The department may require additional bond under penalty of revoking the license. The bond shall be in a form and shall contain additional conditions as the department may prescribe to carry out the purposes of this act, and the bond may, in the discretion of the department, include any required fire insurance.

**History:** En. Sec. 6, Ch. 164, L. 1935; amd. Sec. 35, Ch. 218, L. 1974.

partment" for "commissioner" throughout the section; and made minor changes in punctuation and phraseology.

#### Amendments

The 1974 amendment substituted "de-

**3-708. (3592.61) Fee for inspecting warehouse.** The department shall charge a reasonable fee, not in excess of ten dollars (\$10) a year, for every examination or inspection of a warehouse under this act. The fee shall be paid to the department and deposited as provided in section 3-704.

**History:** En. Sec. 8, Ch. 164, L. 1935; amd. Sec. 36, Ch. 218, L. 1974.

partment" for "commissioner" at the beginning of the section; and made minor changes in punctuation and phraseology.

#### Amendments

The 1974 amendment substituted "de-

**3-709. (3592.62) Records of bean dealer—inspection—receipt.** (1) A dealer in beans shall keep a complete record of all beans handled by him in a form described by the department.

(2) The record shall be open to the confidential inspection of the department at all times. Every warehouseman shall issue a receipt for all beans received for storage on a form approved by the department.

**History:** En. Sec. 9, Ch. 164, L. 1935; amd. Sec. 37, Ch. 218, L. 1974.

department in subsection (1) for a description of the contents; substituted "department" for "commissioner" in subsection (2); and made minor changes in style and phraseology. For prior version see parent volume.

#### Amendments

The 1974 amendment substituted the reference to the form as described by the

**3-710. (3592.63) Rules to be adopted by department.** The department shall adopt rules it considers necessary for the safe conduct of the business referred to in this act, including a scale of storage charges and warehouse receipts. The department may require reports from any warehouseman or person receiving stored beans on forms prepared by the department.

**History:** En. Sec. 10, Ch. 164, L. 1935; amd. Sec. 38, Ch. 218, L. 1974; amd. Sec. 8, Ch. 13, L. 1977.

"commissioner"; and made minor changes in punctuation and phraseology.

The 1977 amendment substituted "warehouse receipts" for "storage receipts" at the end of the first sentence; and made minor changes in punctuation.

#### Amendments

The 1974 amendment substituted references to "department" for references to

**3-712. (3592.65) Storage constitutes bailment—duty to keep beans in storage.** The storage of beans under this act constitutes a bailment, and upon the return of the warehouse receipt properly endorsed and upon the payment or tender of all advances and legal charges, the holder of the warehouse receipt is entitled to and the warehouseman shall deliver the identical grade and amount of beans placed in storage. A dealer under this act shall maintain at all times in original storage beans equal in amount and grade to all warehouse receipts issued, unless authorized in writing by holders of receipts or by the department to move to other storage. Failure to maintain the proper amount of beans is a conversion.

**History:** En. Sec. 12, Ch. 164, L. 1935; amd. Sec. 39, Ch. 218, L. 1974; amd. Sec. 9, Ch. 13, L. 1977.

**Amendments**

The 1974 amendment substituted "department" for "commissioner" near the

end of the section; and made minor changes in punctuation and phraseology.

The 1977 amendment substituted "warehouse receipts" in the second sentence for "storage certificates"; and made minor changes in punctuation.

**3-713. (3592.66) Records of warehousemen — reports.** A person operating under this act shall keep in a place of safety complete records of all beans stored by him, all beans withdrawn from storage, all warehouse receipts issued by him, and all the receipts returned to and canceled by him, and shall report to the department as required by the rules of the department.

**History:** En. Sec. 13, Ch. 164, L. 1935; amd. Sec. 40, Ch. 218, L. 1974.

**Amendments**

The 1974 amendment substituted "de-

partment" for references to "commissioner" at the end of the section; and made minor changes in punctuation and phraseology.

**3-714. (3592.67) Enforcement — investigations — hearings — orders of department — appeals.** (1) To enforce this act, the department may, upon its own motion, or shall upon verified complaint against any dealer or any person assuming or attempting to act as a dealer make all necessary investigations. The department shall at all times have free access to all buildings, yards, warehouses, storage and transportation or other facilities or places in which beans are kept, stored, handled or transported. If the department, upon investigation, believes that a dealer is not acting in accordance with this act, or if a verified complaint is filed against a dealer, the department shall personally serve on the dealer, or shall mail by registered mail, a complaint, or a copy of the verified complaint. If the dealer fails to make formal adjustment or settlement of the charges to the satisfaction of the department, the department shall hold a formal hearing. Notice of the hearing shall be given at least twenty (20) days before the hearing. The hearing shall be held in the city or town in which the transaction complained of is alleged to have occurred.

(2) Copies of records, inspection certificates, certified reports, and all papers on file with the department are prima facie evidence of the matters contained in them.

(3) After the hearing the department shall dismiss the charges, suspend the license of the dealer for a specified time, revoke the license,

or make any other appropriate order considered just and proper. An order shall specify its effective date and any order other than one suspending or revoking a license automatically suspends the license until the order is complied with. An appeal may be made from the decision of the department under sections 3-3304 and 3-3308.

**History:** En. Sec. 14, Ch. 164, L. 1935; amd. Sec. 41, Ch. 218, L. 1974.

#### **Amendments**

The 1974 amendment substituted "department" throughout this section for "commissioner"; deleted a sentence dealing

with oaths, testimony, and subpoenas; substituted the sections at the end of subsection (3) relating to appeals for references to sections 84-3405 and 84-3409 to 84-3412; and made numerous changes in style, punctuation and phraseology. For prior version see parent volume.

## **CHAPTER 8—AGRICULTURAL SEEDS**

### **Section**

3-802.1. Definitions.

3-802.2. Labeling of agricultural seeds.

3-802.3. Labeling of vegetable and flower seeds.

3-802.4. Prohibitions.

3-802.5. Department may revise classifications—hearing—order.

3-803. Exception of seeds, when.

3-804. Penalty.

3-805. Inspection by grain and seed laboratory—reports—enforcement.

3-806.1. Testing agent of submitted samples.

3-807. Laboratory testing of samples—rates.

3-808. Certificate of test presumptive evidence.

3-809. Certified seeds—advertisement—definition.

3-810. Rules and regulations by Montana state university—certification agencies.

3-811. Certification work on self-supporting basis.

3-813. Withholding certification.

3-814. Unlawful use of certification—penalty.

3-820, 3-821. [Transferred.]

### **3-801, 3-802. (3593, 3594) Repealed.**

#### **Repeal**

Sections 3-801 and 3-802 (Secs. 1, 2, Ch. 12, L. 1913; Sec. 1, Ch. 110, L. 1929; Sec. 1, Ch. 192, L. 1937; Secs. 2, 3, Ch. 88, L.

1939; Secs. 1, 2, Ch. 155, L. 1951; Sec. 1, Ch. 168, L. 1961), relating to the labeling of agricultural seeds, were repealed by Sec. 7, Ch. 361, Laws 1969.

**3-802.1. Definitions.** Terms used in this act and not otherwise identified are hereby defined:

(1) Agricultural seeds shall be the seeds of grass, forage, cereal, and fiber crops and any other kinds of seeds commonly recognized within this state as agricultural seeds, and shall include lawn seeds and mixtures of seeds.

(2) Vegetable seeds shall include the seeds of those crops that are or may be grown in gardens or on truck farms and are or may be sold generally under the name of vegetable seeds.

(3) Flower seeds shall include seeds of herbaceous plants grown for their blooms, ornamental foliage, or other ornamental parts and are commonly known and sold under the name of flower seeds in this state.

(4) (a) The term "weed seeds" shall include the seeds or bulblets of all plants generally recognized as weeds within this state, and shall include noxious weed seeds.



(b) Noxious weed seeds are hereby divided into two (2) groups defined as follows:

1. "Prohibited noxious weed seeds" are the seeds of perennial and other serious weeds that not only reproduce by seed but also may spread by underground roots, stems, and other reproductive parts, and which when well established, are highly destructive and difficult to control in this state by ordinary good cultural practice. Prohibited noxious weed seeds shall include the seeds of:

Canada thistle	( <i>Cirsium arvense</i> )
Leafy spurge	( <i>Euphorbia esula</i> )
Hoary cress	( <i>Cardaria draba</i> )
Quackgrass	( <i>Agropyron repens</i> )
Russian knapweed	( <i>Centaurea repens</i> )
Perennial sowthistle	( <i>Sonchus arvensis</i> )
Field bindweed	( <i>Convolvulus arvensis</i> )
Dalmatian toadflax	( <i>Linaria dalmatica</i> )
Halogeton	( <i>Halogeton glomeratus</i> )
Medusa-head wildrye	( <i>Elymus caput-medusae</i> )
Creeping bellflower	( <i>Campanula rapunculoides</i> )
Yellow toadflax	( <i>Linaria vulgaris</i> )

2. "Restricted noxious weed seeds" are the seeds of weeds that are very objectionable in fields, lawns and gardens of this state, but can be controlled by good cultural practices.

Restricted noxious weed seeds shall include the seeds of:

Dodder	( <i>Cuscuta</i> spp.)
Blue lettuce	( <i>Lactuca pulchella</i> )
St. Johnswort	( <i>Hypericum perforatum</i> )
Oxeye daisy	( <i>Chrysanthemum leucanthemum</i> )
Spotted knapweed	( <i>Centaurea maculosa</i> )
Hoary alyssum	( <i>Berteroa incana</i> )
Wild oats	( <i>Avena fatua</i> )
Buckhorn plantain	( <i>Plantago lanceolata</i> )
Chickweed	( <i>Stellaria</i> spp.)
Curly dock	( <i>Rumex crispus</i> )

(5) The term "hybrid" applied to kinds of varieties of seed means the first generation seed of a cross produced by controlling the pollination and by combining (a) two or more inbred lines; (b) one inbred or a single cross with an open pollinated variety; or (c) two or more selected clones, seed lines, varieties, or species. "Controlling the pollination" means to use a method hybridization which will produce pure seed which is at least seventy-five per cent (75%) hybrid seed. Hybrid designations shall be treated as variety names.

(6) The terms "approximate percentage" and "approximate number" shall mean the percentage or number with the variations above or below as allowed according to the tolerance limits defined in the "rules for seed testing" adopted by the Association of Official Seed Analysts.

(7) The term "percentage of germination" shall mean the percentage of seeds which show normal sprouts as evidence of vitality when the seeds are subjected to the proper moisture and temperature conditions with proper aeration for the customary length of time for each specific kind of seed, as specified in the "rules for seed testing" adopted by the Association of Official Seed Analysts.

(8) The term "name of state in which the seed was grown" shall mean any of the several states of the United States or the foreign country.

(9) The term "other crop seeds" shall mean any agricultural, vegetable, or flower seeds other than the seed or the mixture of seeds under consideration.

(10) The term "sell" shall include "offer for sale," "expose for sale," "have in possession for sale," "exchange," "barter," or "trade." It shall also include agricultural seeds which are furnished to growers for the production of a crop on contract.

(11) The term "certifying agency" means:

(a) an agency authorized under the laws of a state, territory or possession to officially certify seed and which has standards and procedures to assure the genetic purity and identity of the seed certified; or

(b) an agency of a foreign country determined by the department of agriculture to adhere to procedures and standards for seed certification comparable to those adhered to generally by seed certifying agencies under subsection (11)(a) of this section.

(12) The term "protected variety" means a variety for which a certificate has been issued by the U.S. plant variety protection office, or for which an application for protection has been filed, granting the owner or his authorized agent exclusive rights in the sale and distribution of the variety.

History: En. Sec. 1, Ch. 361, L. 1969;  
amd. Sec. 1, Ch. 390, L. 1973.

#### Title of Act

An act to provide a uniform agricultural seed law defining seeds and regulating the sale and labeling of seeds by amending section 3-803 and by repealing sections 3-801, 3-802, 3-816, 3-817, 3-818, 3-819, R. C. M. 1947.

#### Amendments

The 1973 amendment deleted *carduus arvensis*, white top, perennial peppergrass and *cardaria pubescens* from the list in subdivision (4) (b) 1; substituted "*Centaurea repens*" for "*Centaurea pieris*" in subdivision (4) (b) 1; made minor changes in the names of plants listed in paragraphs 1 and 2 of subdivision (4) (b); deleted "of North America" from the ends of subsections (6) and (7); and added subsections (11) and (12).

**3-802.2. Labeling of agricultural seeds.** (1) The owner, vendor, or person in possession of any package, parcel, or lot of agricultural seeds, as defined in 3-802.1, that contains 1 pound or more of agricultural seeds, whether in package or in bulk, shall, before offering the seeds for sale, affix in a conspicuous place on the exterior of the container a written or printed label in the English language in legible type or copy containing a statement specifying:

(a) a lot number or other distinguishing mark;

(b) kind. The name of each kind of seed present in excess of 5% shall be shown on the label and need not be accompanied by the word "kind."

When two or more kinds of seed are named on the label, the name of each kind shall be accompanied by the percentage of each. When only one kind of seed is present in excess of 5% and no variety name or type designation is shown, the percentage of that kind may be shown as "pure seed" and such percentage shall apply to seed of the kind named.

(c) variety, as follows:

(i) the following kinds of agricultural seeds shall be labeled to show the variety name or the words "variety not stated":

alfalfa	oat
barley	pea, field
bean, field	rye
beet, field	safflower
brome, smooth	sorghum
clover, crimson	sorghum-sudan hybrid
clover, red	soybean
clover, white	sudan grass
corn, field	sunflower
corn, pop	trefoil, birdsfoot
fescue, tall	wheat, common
flax	wheat, durum
millet, foxtail	

(ii) if the name of the variety is given, the name may be associated with the name of the kind with or without the words "kind and variety". The percentage in this case may be shown as "pure seed" and shall apply only to seed of the variety named. If separate percentages for the kind and the variety or hybrid are shown, the name of the kind and the name of the variety or the term "hybrid" shall be clearly associated with the respective percentages. When two or more varieties are present in excess of 5% and are named on the label, the names of each variety shall be accompanied by the percentage of each;

(d) that the seed is hybrid, if any one kind or kind and variety of seed present in excess of 5% is "hybrid" seed. The percentage that is hybrid shall be at least 95% of the percentage of pure seed shown unless the percentage of pure seed which is hybrid seed is shown separately. If two or more kinds or varieties are present in excess of 5% and are named on the label, each that is hybrid shall be designated as hybrid on the label. No one kind or variety of seed may be labeled as hybrid if the pure seed contains less than 75% hybrid seed. Any one kind or kind and variety that has pure seed which is less than 95% but more than 75% hybrid seed as a result of incompletely controlled pollination in a cross shall be labeled to show:

(i) the percentage of pure seed that is hybrid seed; or

(ii) a statement such as "Contains from 75% to 95% hybrid seed";

(e) state or country of origin, if known, of alfalfa, red clover, white clover, native range grasses, and field corn other than hybrid. If the origin is unknown, the fact shall be stated.

(f) the approximate percentage of germination of agricultural seed, together with the date of test of germination. In all cases where hard



seeds remain at the end of the germination test, the percentage of actual germination and the percentage of hard seeds shall be stated separately, with the provision that any portion or all of the percentage of hard seeds may be added to the percentage of germination and stated as "total germination and hard seed".

(g) the approximate percentage by weight of pure seed, meaning the freedom of agricultural seeds from inert matter and from other seeds;

(h) the approximate percentage by weight of sand, dirt, broken seeds, sticks, chaff, and other inert matter combined in agricultural seeds;

(i) the approximate total percentage by weight of weed seeds;

(j) the approximate percentage by weight of other crop seeds in agricultural seeds;

(k) the name and approximate number of each kind or species of restricted noxious weed seeds occurring per pound of agricultural, vegetable, or flower seeds;

(l) the full name and address of the seedsman, importer, dealer or agent, or other person, firm, or corporation selling the agricultural seed;

(m) in the case of mixtures of agricultural seeds which contain two or more kinds of seed in excess of 5% by weight of each, when sold as mixtures:

(i) name of mixture;

(ii) name and approximate percentage by weight of each kind of agricultural seed present in the mixture in excess of 5% by weight of the total mixture;

(iii) approximate percentage by weight of broken seeds and other inert matter in the mixture of agricultural seeds;

(iv) approximate percentage by weight of weed seeds as defined in 3-802.1;

(v) approximate percentage by weight of other crop seed in the mixture of agricultural seeds;

(vi) name and approximate number of each kind or species of restricted noxious weed seeds occurring per pound of mixtures of agricultural seeds, subject, however, to restrictions as specified in 3-802.4;

(vii) approximate percentage of germination of each kind of agricultural seed present in the mixture in excess of 5% by weight, together with the month and year the seed was tested. In all cases where hard seeds remain at the end of the germination test, the percentage of actual germination and the percentage of hard seeds shall be stated separately, with the provision that any portion or all of the hard seed may be added to the percentage of germination and stated as "total germination and hard seed".

(viii) full name and address of the vendor of the mixture.

(2) When seed is exchanged or transferred from one seed labeler to another, it shall be accompanied by a shipping document which clearly shows the kind(s) of seed and quantity of each kind. Each container in a lot shall carry appropriate lot number designation and shall be accompanied by mechanical analysis for each lot so involved.

History: En. Sec. 2, Ch. 361, L. 1969; amd. Sec. 2, Ch. 390, L. 1973; amd. Sec. 10, Ch. 13, L. 1977.

**Amendments**

The 1973 amendment deleted "in excess of nine (9) weed seeds" before "per pound" in subsection (10) and subdivision (12) (f) and added subsection (13). The 1977 amendment designated the former introductory paragraph as subsection (1); redesignated subdivision (1) as subdivision (1)(a); redesignated the first paragraph of subdivision (2) as subdivi-

sion (1)(b); redesignated the second paragraph of subdivision (2) as subdivision (1)(c) and redesignated subdivisions (a) and (b) thereof as subdivisions (1)(c)(i) and (1)(c)(ii), respectively; redesignated subdivisions (3) through (12) as subdivisions (1)(d) through (1)(m), respectively; redesignated subdivisions (12)(a) through (12)(h) as subdivisions (1)(m)(i) through (1)(m)(viii), respectively; redesignated subdivision (13) as subsection (2); and made minor changes in style, punctuation and phraseology.

**3-802.3. Labeling of vegetable and flower seeds.** Vegetable and flower seeds in packets and in larger containers shall be labeled with the required information as follows:

- (1) Each container of one (1) pound or less:
  - (a) The commonly accepted name of the kind or the kind and variety of the seed.
  - (b) The name and address of the person who labeled the seed or who sells the seed within this state.
  - (c) The name and number per pound of each kind of restricted noxious weed seeds as prescribed in section 4 [3-802.4] of this act.
  - (d) In the case of seed which has a percentage of germination less than the standard prescribed in the Federal Seed Act:
    1. The percentage of germination.
    2. The percentage of hard seed, if more than one per cent (1%).
    3. The month and year the test to determine the data required by this section was completed.
    4. The words "below standard germination" in not less than eight (8) point boldface type.
- (2) Each container of more than one (1) pound:
  - (a) The name of the kind and variety of the contents.
  - (b) The lot numbers or other lot identification.
  - (c) The name and number per pound of each kind of restricted noxious weed seed as prescribed in section 4 [3-802.4] of this act.
  - (d) The percentage of germination and whether the percentage of germination meets or exceeds the standard established in the Federal Seed Act.
  - (e) The percentage of hard seed, if more than one per cent (1%).
  - (f) The month and year the test to determine the data required by this section was completed.
  - (g) The name and address of the person who labeled the seed or who sells the seed within this state.

History: En. Sec. 3, Ch. 361, L. 1969.

United States Code as Tit. 7, sec. 1551 et seq.

**Compiler's Notes**

The Federal Seed Act is compiled in the

**3-802.4. Prohibitions.** A person, firm, corporation, partnership, or association may not sell or transport for use in planting in this state any agricultural, vegetable, or flower seed that:

- (1) contains prohibited noxious weed seeds;
- (2) contains restricted noxious weed seeds in excess of the maximum numbers per pound as follows:

Common name	Species	Number of seeds per pound
dodder	( <i>Cuscuta</i> spp.)	18
blue lettuce	( <i>Lactuca pulchella</i> )	27
St. Johnswort	( <i>Hypericum perforatum</i> )	27
oxeye daisy	( <i>Chrysanthemum leucanthemum</i> )	90
spotted knapweed	( <i>Centaurea maculosa</i> )	18
hoary alyssum	( <i>Berteroa incana</i> )	9
wild oats	( <i>Avena fatua</i> )	45
buckhorn plantain	( <i>Plantago lanceolata</i> )	90
chickweed	( <i>Stellaria</i> spp.)	9
curly dock	( <i>Rumex crispus</i> )	45

- (3) contains in excess of 2% or more of weed seed;
- (4) is offered or exposed for sale more than 12 calendar months from the last day of the month in which the germination test was completed. This 12-month limitation does not apply when seed is packaged in hermetically sealed containers within 12 months after harvest. The container must be conspicuously labeled in not less than 8-point type to indicate that:
- (a) the container is hermetically sealed;
  - (b) the seed has been preconditioned as to moisture content;
  - (c) the germination test is valid for a period not to exceed 18 months from the date of the germination test for seeds offered for sale on a wholesale basis, and for a period not to exceed 36 months for seeds offered for sale at retail;
  - (d) the germination of vegetable seed at the time of packaging was equal to or above standards prescribed in the Federal Seed Act of August 1939, 7 U.S.C. 1551 through 1610 amended October 15, 1967, with subsequent revisions.

(5) is represented in any manner to be for lawn seeding purposes, unless it contains at least 50% pure seed of perennial fine-textured species which shall be specified by rules under this act. However, grass mixtures which do not contain 50% pure seed of perennial fine-textured grasses may be sold. When these grass mixtures are contained in packages of 25 pounds or less, they shall carry the statements: "Not recommended for a fine-textured perennial turf. Satisfactory for a temporary ground cover or where coarse grass is not objectionable." A definition of fine-textured varieties to be adopted in the rules is as follows:

- (a) bluegrasses—all varieties except Canada bluegrass (*Poa compressa*), annual bluegrass (*Poa annua*), and rough bluegrass (*Poa trivialis*);
- (b) chewings red fescue and all improved varieties;
- (c) creeping red fescue and all improved varieties;



(d) bentgrass—all varieties;

(e) fine-textured ryegrasses.

(6) is labeled, advertised, or otherwise represented as being certified seed of any class thereof unless:

(a) it has been determined by a seed certifying agency that such seed conforms to standards of purity and identity as to kind, species (and subspecies, if appropriate), or variety; and

(b) the seed bears an official label issued for such seed by a seed certifying agency certifying that the seed is of a specified class and a specified kind, species (and subspecies, if appropriate), or variety;

(7) is labeled with a variety name for which a U.S. certificate of plant variety protection has been issued or applied for under the provisions of the Plant Variety Protection Act (7 U.S.C. 2321 et. seq.), without the authority of the owner of the variety; or is labeled with a variety name but not certified by an official seed certifying agency when it is a variety for which the certificate or application for "protection" specifies sale only as a class of certified seed; provided, that seed from a certified lot may be labeled as to variety name when used in a mixture by or with approval of the owner of the variety.

**History:** En. Sec. 4, Ch. 361, L. 1969; amd. Sec. 12, Ch. 390, L. 1973; Sec. 3-820, R. C. M. 1947; amd. and redes. 3-802.4 by Sec. 45, Ch. 218, L. 1974; amd. Sec. 11, Ch. 13, L. 1977; amd. Sec. 5, Ch. 315, L. 1977.

#### Compiler's Notes

This section was amended twice in 1977, once by Ch. 13 and once by Ch. 315. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

#### Amendments

The 1973 amendment made minor changes in the common names of plants listed in subdivision (2); substituted "fine-textured" for "fine-leaf" throughout subdivision (5); added Rough Bluegrass (*Poa annua*) to subdivision (5)(a); and added subdivisions (6) and (7).

The 1974 amendment renumbered this section; and made minor changes in phraseology.

Chapter 13, Laws of 1977, substituted "August 1939, 7 U. S. C. 1551 through 1610" near the end of subdivision (4)(d)

for "August 1963"; substituted "is labeled, advertised, or otherwise represented as being certified seed" at the beginning of subdivision (6) for "The labeling, advertising or other representation subject to this act represents the seed to be certified seed of any class thereof"; and made minor changes in phraseology, punctuation and style.

Chapter 315, Laws of 1977, inserted the column head "Common name" in subdivision (2); substituted references to 12 months in two places in subdivision (4) for references to 9 months; substituted "August 1939, 7 U. S. C. 1551 through 1610 amended October 15, 1967" near the end of subdivision (4)(d) for "August 1963"; substituted "is represented to be" at the beginning of subdivision (6) for "The labeling, advertising or other representation subject to this act represents the seed to be"; and made minor changes in phraseology, punctuation and style.

#### Repealing Clause

Section 13 of Ch. 313, Laws 1973 read "Section 3-806, R. C. M. 1947, is repealed.

**3-802.5. Department may revise classifications—hearing—order.** The department may, with the written approval of the director of the agricultural experiment station recorded before or within ten (10) days after a public hearing, revise the groups and classifications of noxious weed seeds provided in this act to prevent or diminish the distribution and occurrence of noxious weed seeds in this state. Notice of the hearing shall be published by the department at least thirty (30) days before the day set for the hearing, in three (3) newspapers of general circulation in the state

and shall be mailed to all associations of seed dealers in the state who are organized on a state-wide basis. A revision or modification made as a result of the hearing shall be adopted by a written order of the department, shall be countersigned "approved" by the director of the agricultural experiment station, and shall plainly state the revisions or modifications and any qualifications, exceptions, or conditions pertaining to the revisions or modifications.

**History:** En. Sec. 5, Ch. 361, L. 1969; Sec. 3-821, R. C. M. 1947; amd. and redes. 3-802.5 by Sec. 46, Ch. 218, L. 1974.

#### **Amendments**

The 1974 amendment renumbered this section; substituted "department" for ref-

erences to "commissioner of agriculture" throughout the section; substituted "agricultural experiment station" for "Montana experiment station" near the beginning and the end of the section; and made changes in punctuation and phraseology.

**3-803. (3595) Exception of seeds, when.** Agricultural seeds or mixtures of same shall be exempt from the provisions of this act:

- (1) When possessed, exposed for sale, or sold for food purposes only.
- (2) When sold to merchants or dealers to be recleaned before being sold or offered for sale for seeding purposes.
- (3) When in store for the purpose of recleaning or not possessed, sold or offered for sale for seeding purposes within the state.

**History:** En. Sec. 3, Ch. 12, L. 1913; re-en. Sec. 3595, R. C. M. 1921; amd. Sec. 4, Ch. 88, L. 1939; amd. Sec. 6, Ch. 361, L. 1969.

a processor of sugar beets to growers contracting the growing and delivery of sugar beets to such vendor or distributor."

#### **Amendments**

The 1969 amendment deleted former subdivision (4) exempting seeds "sold by

#### **Repealing Clause**

Section 7 of Ch. 361, Laws 1969 read "Sections 3-801, 3-802, 3-816, 3-817, 3-818 and 3-819 R. C. M. 1947, are repealed."

**3-804. (3596) Penalty.** Any person, firm, or corporation who sells or offers or exposes for sale or distribution in the state any agricultural seeds for seeding purposes without complying with the requirements of 3-802.1 through 3-808 is guilty of a misdemeanor and upon conviction shall be fined not less than \$100 or more than \$300 plus costs of such prosecution and upon conviction of the second or any subsequent offense shall be fined not less than \$500 or more than \$1,000 plus costs of such prosecution.

**History:** En. Sec. 4, Ch. 12, L. 1913; re-en. Sec. 3596, R. C. M. 1921; amd. Sec. 2, Ch. 110, L. 1929; amd. Sec. 5, Ch. 88, L. 1939; amd. Sec. 3, Ch. 390, L. 1973; amd. Sec. 12, Ch. 13, L. 1977.

from \$25.00 to \$100.00 to from \$100 to \$300 for a first conviction and from \$50 to \$500 to from \$500 to \$1,000 for subsequent convictions.

#### **Amendments**

The 1973 amendment increased the fines

The 1977 amendment substituted "3-802.1 through 3-808" for "this act"; and made minor changes in phraseology, punctuation and style.

**3-805. (3597) Inspection by grain and seed laboratory—reports—enforcement.** (1) The grain and seed laboratory of the agricultural experiment station shall inspect, analyze, and test seeds sold or offered or exposed for sale in this state at a time and place and to the extent the director of the agricultural experiment station and the department of agriculture determine. The laboratory shall report to the department all violations as they appear. It shall also annually before September 1 make a report to



the department of all tests made and the results, which may be published by the department. The laboratory and the department shall have free access at all reasonable hours to all premises or structures to make examination of any seeds or any other premises of a warehouse, elevator, or railway company. Upon tendering payment at the current value, the department may take any sample of seeds.

(2) The department shall administer and enforce 3-802.1 through 3-808. For that purpose, the department may adopt rules. The department may issue and enforce a written or printed "stop sale" order to the owner or custodian of any lot of agricultural seed which the department finds in violation of 3-802.1 through 3-808. The order shall prohibit further sale of the seed until the department has evidence that the law has been complied with. The seed may not be confiscated or destroyed. Upon proper correction, by reprocessing, labeling, or otherwise, and when, in the judgment of the department, the requirements of 3-802.1 through 3-808 have been met, the stop sale order shall be lifted and the seed may be sold. The department shall adopt all necessary rules relating to the agricultural experiment station's duties under 3-802.1 through 3-808.

**History:** En. Sec. 5, Ch. 12, L. 1913; re-en. Sec. 3597, R. C. M. 1921; amd. Sec. 6, Ch. 88, L. 1939; amd. Sec. 3, Ch. 155, L. 1951; amd. Sec. 42, Ch. 218, L. 1974; amd. Sec. 13, Ch. 13, L. 1977.

#### Amendments

The 1974 amendment substituted references to the grain and seed laboratory in subsection (1) for references to the director of the grain inspection laboratory; substituted the reference to the director of the experiment station in the first sentence of subsection (1) for a reference to the grain inspection laboratory director;

substituted references to the department of agriculture throughout the section for references to the commissioner of agriculture, except in the last sentence of subsection (2); substituted "department" and "agricultural experiment station's duties" in the last sentence of subsection (2) for references to the grain inspection laboratory director and his duties; and made minor changes in style, punctuation and phraseology.

The 1977 amendment substituted "3-802.1 through 3-808" throughout subsection (2) for "this act"; and made minor changes in punctuation and phraseology.

### 3-806. (3598) Repealed.

#### Repeal

Section 3-806 (Sec. 6, Ch. 12, L. 1913; Sec. 7, Ch. 88, L. 1939), relating to em-

ployment and payment of seed inspection agents, was repealed by Sec. 13, Ch. 390, Laws 1973. For new law see sec. 3-806.1.

**3-806.1. Testing agent of submitted samples.** The grain and seed laboratory shall analyze any seed samples taken from seed lots offered for sale in the state and submitted by the department.

**History:** En. 3-806.1 by Sec. 4, Ch. 390, L. 1973.

#### Title of Act

An act defining certifying agency and protected variety; providing for labeling

of seeds; providing a penalty; providing for testing of seed samples; providing for additional prohibitions; amending sections 3-802.1, 3-802.2, 3-804, 3-807, 3-808, 3-810 through 3-814 and 3-820, R. C. M. 1947; and repealing section 3-806, R. C. M. 1947.

**3-807. (3599) Laboratory testing of samples—rates.** Any citizen of this state may request the grain and seed laboratory to examine, analyze, and test samples of seed upon payment of the fee and compliance with rules governing the submission of seed samples for such service. Samples of seed analyzed and tested shall be charged for at rates determined jointly by the department and the director of the grain and seed laboratory. All



fees collected by the grain and seed laboratory shall be used to defray the expenses incurred by the laboratory under 3-802.1 through 3-808.

**History:** En. Sec. 7, Ch. 12, L. 1913; re-en. Sec. 3599, R. C. M. 1921; amd. Sec. 2, Ch. 192, L. 1937; amd. Sec. 3, Ch. 88, L. 1939; amd. Sec. 1, Ch. 85, L. 1949; amd. Sec. 4, Ch. 155, L. 1951; amd. Sec. 5, Ch. 390, L. 1973; amd. Sec. 14, Ch. 13, L. 1977.

#### Amendments

The 1973 amendment substituted references to "the grain and seed laboratory" for references to "the Montana grain in-

spection laboratory of the Montana experiment station"; substituted "department" near the end of the first sentence for a reference to the commissioner of agriculture and the director of the experiment station; and made numerous minor changes in phraseology.

The 1977 amendment substituted "3-802.1 through 3-808" at the end of the section for "this act"; and made a minor change in punctuation.

**3-808. (3600) Certificate of test presumptive evidence.** The certificate of the grain and seed laboratory, giving results of any examinations, analyses or tests of any seed samples made under the authority of the department is presumptive evidence of the correctness of the facts stated in it.

**History:** En. Sec. 8, Ch. 12, L. 1913; re-en. Sec. 3600, R. C. M. 1921; amd. Sec. 9, Ch. 88, L. 1939; amd. Sec. 6, Ch. 390, L. 1973.

#### Amendments

The 1973 amendment substituted "grain

and seed laboratory" for a reference to the grain inspection laboratory of the experiment station; substituted "department" for a reference to the commissioner of agriculture; and made minor changes in phraseology.

**3-809. Certified seeds—advertisement—definition.** A person, firm, association, or corporation who issues, uses, or circulates any certificate, advertisement, tag, seal, poster, letterhead, marking, circular, or written or printed representation or description pertaining to seeds or plant parts intended for propagation or sale, or sold or offered for sale, in which the words "Montana state certified," "state certified," "Montana certified," or similar words or phrases are used or employed, is subject to sections 3-809 through 3-814.

**History:** En. Sec. 1, Ch. 11, L. 1951; amd. Sec. 43, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment deleted a last sentence reading "Every issuance, use or

circulation of any certificate and/or other instrument, as in this section above described, shall be deemed to be 'certification' as that term is employed in this act"; and made minor changes in style, punctuation and phraseology.

**3-810. Rules and regulations by Montana state university—certification agencies.** Every person, firm, association or corporation subject to the provisions of this act shall observe, perform or comply with all rules and standards for seed certification established or specified by Montana state university, hereafter referred to as the university, as to what crops grown or to be grown in Montana shall be eligible for certification hereunder, as to the conduct of such certification, either by said university directly or by agents or agencies authorized by it for the purpose, and as to standards, requirements and forms of and for certification hereunder; provided, however, that not more than one such agent or agency for certification shall be designated for any one specified crop. No certification, within the provi-

sions of this act shall be made or authorized except by or through said university.

History: En. Sec. 2, Ch. 11, L. 1951; amd. Sec. 7, Ch. 390, L. 1973.

**Amendments**

The 1973 amendment substituted "and

standards for seed certification" in the first sentence for "regulations and requirements fixed"; and substituted "university" for "college" throughout the section.

**3-811. Certification work on self-supporting basis.** Certification work, whether conducted by said university or by an agency designated by it, shall be on a self-supporting basis and not for financial profit.

History: En. Sec. 3, Ch. 11, L. 1951; amd. Sec. 8, Ch. 390, L. 1973.

**Amendments**

The 1973 amendment substituted "university" for "college."

**3-812. Repealed.**

**Repeal**

Section 3-812 (Sec. 4, Ch. 11, L. 1951; Sec. 9, Ch. 390, L. 1973), relating to exemp-

tion from liability of Montana state college relative to its certification work, was repealed by Sec. 173, Ch. 218, Laws 1974.

**3-813. Withholding certification.** The said university or its designated agency or agencies, may withhold certification from any grower of seeds or plant parts who is engaged in or attempting to engage in any dishonest practices for the purpose of evading the provisions of this act, including standards, rules and regulations laid down by the said university or its designated agency or agencies to cover certification.

History: En. Sec. 5, Ch. 11, L. 1951; amd. Sec. 10, Ch. 390, L. 1973.

**Amendments**

The 1973 amendment substituted "university" for "college."

**3-814. Unlawful use of certification—penalty.** A person, firm, association, or corporation may not issue, make, use, or circulate any document purporting to be or represented as a seed or plant part certification certificate, represent seeds or plant parts as certified, or use the terms "Montana state certified," "state certified," "Montana certified," or similar words or phrases, without the authority and approval of the university. A person, firm, association, or corporation who violates sections 3-809 through 3-814 is guilty of a misdemeanor and shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each offense.

History: En. Sec. 6, Ch. 11, L. 1951; amd. Sec. 11, Ch. 390, L. 1973; amd. Sec. 44, Ch. 218, L. 1974.

**Amendments**

The 1973 amendment substituted "university" for "college" in the first sentence; and made a minor change in phraseology.

The 1974 amendment substituted the description of the document in the first sentence for "certification as defined in this act"; substituted "sections 3-809 through 3-814" in the second sentence for "provisions of this act pertaining to certification"; and made minor changes in punctuation and phraseology.

**3-815. Repealed.**

**Repeal**

Section 3-815 (Sec. 7, Ch. 11, L. 1951), relating to validity of any provisions of

the state seed laws, was repealed by Sec. 173, Ch. 218, Laws 1974.

**3-816 to 3-819. Repealed.****Repeal**

Sections 3-816 to 3-819 (Secs. 1 to 4, Ch. 196, L. 1961), relating to the labeling of

vegetable and flower seeds, were repealed by Sec. 7, Ch. 361, Laws 1969.

**3-820, 3-821. [Transferred.]****Compiler's Notes**

Sections 45 and 46, Ch. 218, Laws of 1974

renumbered these sections as secs. 3-802.4 and 3-802.5.

**CHAPTER 9—SEALERS OF GRAIN**

(Repealed—Section 173, Chapter 218, Laws of 1974)

**3-901 to 3-906. (3602.1 to 3602.6) Repealed.****Repeal**

Sections 3-901 to 3-906 (Secs. 1 to 6, Ch. 111, L. 1933; Sec. 33, Ch. 147, L. 1963),

relating to sealers of grains, were repealed by Sec. 173, Ch. 218, Laws 1974.

**CHAPTER 10—HARMFUL BARBERRY CONTROL****Section**

3-1002. Duty of department of agriculture to destroy—proceedings.

3-1004. Act applicable to mahonia.

**3-1002. (3604) Duty of department of agriculture to destroy—proceedings.** The department of agriculture shall destroy harmful barberry plants found growing anywhere in the state. If the owner of the land on which the plants are found fails to destroy the plants within ten (10) days after receiving a written notice to that effect from the department, the department shall destroy the plants. The department shall then make out a statement in duplicate of the actual cost and expense incurred in destroying the plants. One copy of the statement shall be transmitted to the landowner, and the other shall be filed with the county treasurer where the land is situated. The treasurer shall place the amount indicated in the statement on the tax duplicate against the land. That amount shall be collected in the same manner and at the same time as taxes are collected. When collected, the amount shall be paid by the treasurer to the department, which shall send it to the state treasurer, to be credited to the general fund.

**History:** En. Sec. 2, Ch. 40, L. 1919; re-en. Sec. 3604, R. C. M. 1921; amd. Sec. 47, Ch. 218, L. 1974.

**Amendments**

The 1974 amendment substituted references to the department of agriculture throughout the section for references to

the state board of horticulture and the horticultural inspector; substituted "credited to the general fund" at the end of the last sentence for "added to the appropriation for the use of the state board of horticulture"; and made minor changes in punctuation and phraseology.

**3-1004. (3606) Act applicable to mahonia.** The department may apply this act to species of mahonia, when in its judgment the necessity arises.

**History:** En. Sec. 4, Ch. 40, L. 1919; re-en. Sec. 3606, R. C. M. 1921; amd. Sec. 48, Ch. 218, L. 1974.

**Amendments**

The 1974 amendment substituted "department" for "state board of horticulture"; and made minor changes in phraseology.



## CHAPTER 11—HORTICULTURE—CONTROL OF FRUIT PESTS AND DISEASES

## Section

- 3-1103. Destruction of fruit pests—use of crates.  
 3-1104. Inspectors—appointment and duties.  
 3-1106. Investigation of source, control, and destruction of insect pests.

**3-1101, 3-1102. (3608, 3609) Repealed.****Repeal**

Sections 3-1101 and 3-1102 (Secs. 37, 38, Ch. 216, L. 1921), relating to enforcement

duties of the division of horticulture, and horticultural districts, were repealed by Sec. 173, Ch. 218, Laws 1974.

**3-1103. (3610) Destruction of fruit pests—use of crates.** (1) The department of agriculture may adopt rules to prevent the spread of contagious disease among fruit and fruit trees, to prevent, treat, and destroy fruit pests and diseases of fruit and fruit trees, and to disinfect grafts, scions, and orchard debris, empty fruit boxes, or packages, or other suspected material or transportable articles dangerous to orchards, fruit, and fruit trees. The rules shall be circulated in printed form by the department among fruit growers and fruit dealers of the state, shall be published at least ten (10) days in two (2) newspapers of general circulation in the state, and shall be posted in three (3) conspicuous places in each county in the state, one of which shall be at the county courthouse. No person may use a second time any crate, box, barrel, package, or wrapping which previously contained nursery stock, however, at the written request of a nurseryman, the department may permit boxes or packages which previously contained nursery stock to be thoroughly fumigated in the presence of an inspector, at the expense of the nurseryman. The department shall give a receipt and mark the box or package. Otherwise, the box or package must be destroyed in its entirety, and possession of the crate, box, barrel, package, or wrapping by a person or dealer, other than the consignee, is prima facie evidence of a violation of this act.

(2) The department may seize and destroy by burning, without breaking, an infected or unlawfully used crate, box, barrel, package, or wrapping wherever found, and prosecute the violator.

**History:** En. Sec. 39, Ch. 216, L. 1921; re-en. Sec. 3610, R. C. M. 1921; amd. Sec. 1, Ch. 29, L. 1963; amd. Sec. 49, Ch. 218, L. 1974.

**Amendments**

The 1974 amendment substituted refer-

ences to the department of agriculture throughout this section for references to the commissioner of agriculture and, in the third and fourth sentences of subsection (1), for references to an inspector; and made minor changes in style, punctuation and phraseology.

**3-1104. (3611) Inspectors—appointment and duties.** The department shall appoint inspectors of fruit pests who shall be selected with reference to their knowledge and practical experience in horticulture. Inspectors shall visit the nurseries, orchards, stores, packing houses, warehouses, and other places where horticultural products and fruits are kept, and shall see that the rules of the department and the laws of the state pertaining to the disinfection of fruits, trees, plants, grafts, orchard debris, and empty fruit boxes and other material are complied with. Inspectors shall have access, at all times, to all orchards or places where horticultural products or supplies are kept or handled. They shall enforce the rules of the depart-

ment and may order the destruction and disinfection of infected trees, plants, fruits, or horticultural products or supplies.

History: En. Sec. 40, Ch. 216, L. 1921; re-en. Sec. 3611, R. C. M. 1921; amd. Sec. 50, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment substituted "de-

partment" for "commissioner of agriculture" in the first and last sentences, and for "department of agriculture, labor and industry" in the second sentence; and made minor changes in punctuation and phraseology.

### 3-1105. (3612) Repealed.

#### Repeal

Section 3-1105 (Sec. 41, Ch. 216, L. 1921), relating to the horticultural in-

spector's appointment and duties, was repealed by Sec. 173, Ch. 218, Laws 1974.

**3-1106. (3613) Investigation of source, control, and destruction of insect pests.** The department may investigate the source, control, and destruction of insect pests, fungus and bacterial diseases of orchards, trees, shrubs, plants, or nursery stock in this state.

History: En. Sec. 42, Ch. 216, L. 1921; re-en. Sec. 3613, R. C. M. 1921; amd. Sec. 51, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment substituted "de-

partment" for an insect specialist as the investigative authority; and deleted provisions for the specialist's employment and term of office. For prior version see parent volume.

## CHAPTER 12—NURSERIES AND NURSERYMEN—LICENSE AND REGULATION

### Section

- 3-1201. Sales of nursery stock—inspection—fee.
- 3-1201.1. Definitions.
- 3-1201.2. Request for inspector's services—costs—certificate of inspection.
- 3-1202. Department rules and orders.
- 3-1203. Duty to notify department of infection.
- 3-1204. Removal of infected trees—assessment of costs.
- 3-1205. Prohibition against delivery of uninspected nursery stock.
- 3-1206. Notice to department of shipment of nursery stock.
- 3-1207. Prohibition against receiving uninspected nursery stock.
- 3-1209. Right to hold nursery stock for inspection.
- 3-1210. Inspection of Montana nursery stock—certificate.
- 3-1211. [Transferred.]
- 3-1212. License required of nurserymen—application and payment of fees.
- 3-1213. Renewal of license.
- 3-1214. Grounds for refusal or revocation of license.
- 3-1215. Acts made unlawful—penalty.
- 3-1216. Duplicate copies of orders for nursery stock required.
- 3-1218. Penalty for violation of chapter.
- 3-1219. Co-operation—agreements with other governmental agencies.

**3-1201. (3614) Sales of nursery stock—inspection—fee.** (1) A person who sells or delivers any nursery stock not previously inspected under this chapter shall notify the department of agriculture of the sale or delivery. The department, after receiving the notice, shall inspect the nursery stock as soon as practicable. If the nursery stock is free from diseases and pests, the department shall so certify and shall attach a certificate of inspection to each lot or bill of nursery stock inspected.

(2) The department may designate certain places as quarantine stations where all nursery stock brought into the state shall be inspected and disinfected.

(3) If any nursery stock is diseased or infested with any of the pests mentioned in section 3-1301, the department shall order its disinfection or destruction together with all boxes, wrapping, or packing. If the department has ordered the destruction of any nursery stock, it shall notify the owner who may appeal to the director of agriculture before the destruction. The director's decision concerning the disposition of the nursery stock is final.

(4) The department shall fix by rule, after a hearing, the charges for disinfecting, fumigating, and inspecting nursery stock.

(5) Notice of the hearing on the proposed charges shall be published once in three (3) newspapers of general circulation in this state. The charge for inspecting each carload of nursery stock is ten dollars (\$10) or a proportionate sum fixed by the department for less than carload lots.

(6) The department shall collect all fees required by this section and may not give a certificate of inspection until the fees are paid.

**History:** En. Sec. 43, Ch. 216, L. 1921; re-en. Sec. 3614, R. C. M. 1921; amd. Sec. 1, Ch. 112, L. 1939; amd. Sec. 1, Ch. 89, L. 1945; amd. Sec. 52, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment substituted "department of agriculture" or "department"

for references to "commissioner of agriculture" and "horticultural inspectors" throughout this section; substituted references to the director of agriculture in the appeal provisions of subsection (3) for references to the commissioner of agriculture; and made numerous changes in style, punctuation, phraseology and arrangement.

**3-1201.1. Definitions.** Unless the context requires otherwise, in this chapter:

(1) "Person" means a person, firm, or corporation.

(2) "Seasonal nurseryman" means a person engaged in the business of selling, dealing in, or importing into the state for sale or distribution, any nursery stock which is for sale only during certain growing seasons and whose place of business is open only during certain growing seasons and not continuously throughout the year.

(3) "Nursery stock" means botanically classified hardy perennial or biennial plants; trees; shrubs; vines; plants, either domesticated or wild; cuttings; grafts; scions; buds; bulbs; rhizomes or roots of them; and other plants and plant parts for, or capable of, propagation. The term does not include vegetable, field, or flower seed, or corms and tubers.

**History:** En. 3-1201.1 by Sec. 53, Ch. 218, L. 1974; amd. Sec. 1, Ch. 155, L. 1975.

#### Amendments

The 1975 amendment inserted "plants" after "biennial" in subdivision (3).

**3-1201.2. Request for inspector's services—costs—certificate of inspection.** Any person may request, upon the payment of actual costs to the department, the services of a horticultural inspector to inspect and certify plant products. Subsequent to inspection such horticultural inspector may issue to the person a certificate of inspection signed by him covering any plant product in compliance with rules of the department.

**History:** En. 3-1201.2 by Sec. 1, Ch. 150, L. 1975.

#### Title of Act

An act to provide for services of a horticultural inspector upon request and payment of costs.



**3-1202. (3615) Department rules and orders.** Every person in charge or control of nursery, orchard, storeroom, packing house, or other place where horticultural products or supplies are handled or kept shall comply with the rules of the department and shall disinfect or destroy diseased or infected nursery stock or other horticultural supplies or products when ordered so to do by the department.

History: En. Sec. 44, Ch. 216, L. 1921; re-en. Sec. 3615, R. C. M. 1921; amd. Sec. 54, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment substituted the present caption for one reading "Penalty for failure to obey rules"; substituted

"department" in the middle of the section for "commissioner of agriculture" and at the end of the section for "inspector"; deleted a penalty provision making noncompliance a misdemeanor punishable by not less than twenty-five nor more than three hundred dollars; and made minor changes in phraseology.

**3-1203. (3616) Duty to notify department of infection.** The owner or manager of an orchard, nursery, storeroom, packing house, or other place where horticultural products or supplies are kept or handled, which becomes diseased or infested with any injurious insect or pest, immediately upon discovery of the existence of the disease or pest, shall notify the department. The owner or manager, at his expense, shall comply with the instructions of the department for the eradication of the disease or pest.

History: En. Sec. 1926, Rev. C. 1907 by Sec. 1, Ch. 121, L. 1911; re-en. Sec. 3616, R. C. M. 1921; amd. Sec. 55, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment substituted "de-

partment" throughout the section for references to inspectors; deleted a penalty provision making noncompliance a misdemeanor punishable by a fine of not less than twenty-five nor more than three hundred dollars; and made minor changes in phraseology.

**3-1204. (3617) Removal of infected trees—assessment of costs.** If a person owning any orchard or nursery stock infected or infested with any injurious insect pest or disease and which becomes a menace to the agricultural or fruit industry, or a menace to ornamental trees, shrubs, plants, or vines fails to comply with the instructions of the department for the destruction or control of the injurious insect pest or disease, or the destruction of the infested or infected orchard or nursery stock within the time specified by the department, the department may condemn, remove, or destroy the orchard or nursery stock or treat it with a proper remedy. If an owner fails to pay the cost of the removal, treatment, or destruction within thirty (30) days after notice has been mailed to the owner at his last known post-office address, the cost shall become a lien on the hand of the owner and shall be added by the county treasurer to the taxes upon the property and collected as other taxes.

History: En. Sec. 45, Ch. 216, L. 1921; re-en. Sec. 3617, R. C. M. 1921; amd. Sec. 1, Ch. 86, L. 1939; amd. Sec. 56, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment substituted refer-

ences to "department" for references to "department of agriculture, labor and industry" throughout the section; and made numerous changes in punctuation and phraseology.

**3-1205. (3618) Prohibition against delivery of uninspected nursery stock.** A person may not receive or deliver any nursery stock unless a certificate issued by the department is attached to the nursery stock.

History: En. Sec. 46, Ch. 216, L. 1921; re-en. Sec. 3618, R. C. M. 1921; amd. Sec. 57, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment rewrote this section, substituting "department" for "inspector" and deleting a penalty provision. For prior version see parent volume.

### 3-1206. (3620) Notice to department of shipment of nursery stock.

A person licensed to do business under this chapter shall notify the department of his intention to ship nursery stock not previously inspected in accordance with this chapter to any point in this state. The notice shall contain the name and address of both the consignor and consignee, the list of the goods to be shipped, the freight or express office at which the goods are to be delivered, and the name or title of the transportation company from whom the consignee is to receive the goods. The notice shall be mailed at least five (5) days before the day of shipment.

History: En. Sec. 48, Ch. 216, L. 1921; re-en. Sec. 3620, R. C. M. 1921; amd. Sec. 58, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment substituted "de-

partment" in the caption and the first sentence of this section for references to the commissioner of agriculture; and made minor changes in punctuation and phraseology.

**3-1207. (3621) Prohibition against receiving uninspected nursery stock.** A person who receives and accepts any nursery stock that has not been inspected by the department shall, before using or disposing of the nursery stock, first notify the department and give it an opportunity to examine and, if necessary, fumigate the nursery stock.

History: En. Sec. 49, Ch. 216, L. 1921; re-en. Sec. 3621, R. C. M. 1921; amd. Sec. 59, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment rewrote this sec-

tion, substituting "department" for references to an inspector or the commissioner of agriculture, and deleting a penalty provision. For prior version see parent volume.

### 3-1208. (3622) Repealed.

#### Repeal

Section 3-1208 (En. Sec. 1928, Rev. C. 1907 by Sec. 1, Ch. 121, L. 1911), relating to delivery of nursery stock without in-

spector's certificate and penalty therefor, was repealed by Sec. 173, Ch. 218, Laws 1974.

**3-1209. (3623) Right to hold nursery stock for inspection.** No person is liable to any other person for any damage to any nursery stock caused by holding it to await the certificate of the department.

History: En. Sec. 1929, Rev. C. 1907 by Sec. 1, Ch. 121, L. 1911; re-en. Sec. 3623, R. C. M. 1921; amd. Sec. 60, Ch. 218, L. 1974; amd. Sec. 2, Ch. 155, L. 1975.

#### Amendments

The 1974 amendment substituted "department" for "inspector"; and made minor changes in phraseology.

The 1975 amendment substituted "nursery stock" for "produce" in the caption.

**3-1210. (3624) Inspection of Montana nursery stock—certificate. (1)** Before it is packed for delivery, all nursery stock grown or growing in this state and used for filling orders shall be inspected by the department. The

nursery stock shall be disinfected by fumigating or other method, when considered necessary by the department. If the nursery stock is clean and free from insects and fungi pests, the department shall issue a certificate to the nurseryman. The certificate shall entitle the nurseryman to use that stock for filling orders for current delivery. The certificate shall be furnished at a price not exceeding forty cents (\$.40) per hundred.

(2) Nurseries shall give the department five (5) days' notice of the time when the stock will be ready for inspection.

History: En. Sec. 50, Ch. 216, L. 1921; re-en. Sec. 3624, R. C. M. 1921; amd. Sec. 61, Ch. 218, L. 1974. partment" throughout this section for "commissioner of agriculture" and "inspector"; and made numerous changes in style, punctuation and phraseology.

#### Amendments

The 1974 amendment substituted "de-

### 3-1211. [Transferred.]

#### Compiler's Notes

Section 62, Ch. 218, Laws of 1974 re-numbered this section as sec. 3-1218.

**3-1212. License required of nurserymen—application and payment of fees.** (1) A person, before engaging in the business of selling, dealing in, or importing nursery stock into this state for sale or distribution; or acting as agent, salesman, or solicitor for any nurseryman or dealer in nursery stock; or soliciting orders for the purchase of nursery stock must obtain a license for each place of business from the department. A person may not falsely represent that he is an agent, salesman, solicitor, or representative of any nurseryman or dealer in nursery stock.

(2) The department shall provide application forms for prospective licensees. Applications for licenses may be made at any time before engaging in business, except seasonal nurserymen must make application at least thirty (30) days in advance of doing business in this state.

(3) Licenses shall be in the name of the person licensed, and shall indicate the purpose for which issued and the name and location of the nursery or place of business of the nurseryman or dealer licensed or represented by an agent, salesman, or solicitor. Licenses, except seasonal nurserymen's licenses, shall bear the date of issue and expire July 1 next following the date of issue. Seasonal nurserymen's licenses shall bear the date of issue and expire on the date provided on the license by the department.

(4) The license fee is fifteen dollars (\$15) a year for a general nursery, dealing in all kinds of nursery products; ten dollars (\$10) a year for a nursery dealing in small fruits, ornamental shrubs, bulbs, and perennials; five dollars (\$5) a year for a nursery dealing in bulbs and perennials only; and fifteen dollars (\$15) a year for seasonal nurserymen. Agents, salesmen, and solicitors for licensed nurseries shall be granted salesmen's licenses, free of charge, upon the request of the licensee.

History: En. Sec. 1, Ch. 220, L. 1943; amd. Sec. 1, Ch. 151, L. 1975. 63, Ch. 218, L. 1974; amd. Sec. 1, Ch. 121, L. 1963; amd. Sec. 1, Ch. 151, L. 1975.



**Amendments**

The 1974 amendment completely rewrote this section. For prior version, see parent volume.

The 1975 amendment inserted "for each place of business" near the end of the first sentence in subsection (1).

**3-1213. Renewal of license.** A licensed nurseryman or dealer in nursery stock who has complied with this chapter is entitled, upon the expiration of his license, to have the license renewed. The license shall be renewed upon payment of the proper fee.

**History:** En. Sec. 2, Ch. 220, L. 1943; amd. Sec. 64, Ch. 218, L. 1974.

**Amendments**

The 1974 amendment deleted "or any renewal thereof" after "expiration of his

license"; deleted "on or before the date of the expiration of his license or any renewal thereof" after "proper fee"; deleted "for the ensuing year ending July first" after "renewed"; and made minor changes in phraseology.

**3-1214. Grounds for refusal or revocation of license.** The department may refuse to issue a license or it may revoke a license under this chapter when:

(1) The person has been adjudged bankrupt, insolvent, or guilty of fraud or deceit by a court of competent jurisdiction; or

(2) A verified complaint is made to the department that a licensee has failed to comply with this chapter or the horticulture laws.

**History:** En. Sec. 3, Ch. 220, L. 1943; amd. Sec. 65, Ch. 218, L. 1974.

**Amendments**

The 1974 amendment substituted "de-

partment" for "commissioner of agriculture" in two places; and made changes in style, punctuation and phraseology.

**3-1215. Acts made unlawful—penalty.** It is unlawful for any person to falsely represent or to misrepresent the name, age, variety, or class of any nursery stock sold or offered for sale; to falsely represent or state that any nursery stock offered for sale, sold, or delivered was grown in or came from a certain nursery or locality, when in fact such nursery stock was grown in or came from another location or nursery; to deceive or defraud any person in the sale of any nursery stock by substituting inferior or different varieties or ages from those ordered; or to willfully or intentionally bring into this state, offer for sale or distribution within this state or ship, sell, or deliver upon any sale any nursery stock that is infected or infested with any disease or insect dangerous to the horticultural interests of the state. In case of such misrepresentation, false representation, deceit, fraud, or substitution, such person is subject to punishment as provided by 3-1218 and is liable to the person, firm, or corporation damaged or injured thereby, to the extent of all damages sustained, to be recovered in a civil action in any court of competent jurisdiction.

**History:** En. Sec. 4, Ch. 220, L. 1943; amd. Sec. 15, Ch. 13, L. 1977.

**Amendments**

The 1977 amendment substituted "3-

1218" in the last sentence for "the statute for misdemeanor"; and made minor changes in punctuation and phraseology.

**3-1216. Duplicate copies of orders for nursery stock required.** (1) A nurseryman or dealer in nursery stock, and a salesman, solicitor, and agent

shall give to a person ordering nursery stock a duplicate copy of the order which shall show:

- (a) The name and location of the nursery where the stock was grown.
- (b) The name of the nurseryman from whom ordered, and the name of the solicitor, salesman, or agent taking the order.
- (c) The date of the order and when delivery is to be made.
- (d) The number, name, age, and price of the variety of tree or plant ordered.

(2) Upon shipment into this state from any point outside this state of any nursery stock, by a person not licensed to do business in this state, the person receiving the nursery stock shall have it inspected by the department and shall pay an inspector's fee of ten per cent (10%) of the invoice price of the shipment. The minimum fee for the inspection shall be fifty cents (50¢) and the actual and necessary traveling expenses of the inspector. No inspection fees may be collected in excess of the regular inspection fees, where the stock is shipped to a person licensed under this chapter.

History: En. Sec. 5, Ch. 220, L. 1943; amd. Sec. 66, Ch. 218, L. 1974.

partment" in subsection (2) for "horticultural inspector"; and made numerous changes in style, punctuation and phraseology.

#### Amendments

The 1974 amendment substituted "de-

### 3-1217. Repealed.

#### Repeal

Section 3-1217 (Sec. 6, Ch. 220, L. 1943), relating to the duration of a nurseryman's

license, was repealed by Sec. 173, Ch. 218, Laws 1974.

**3-1218. Penalty for violation of chapter.** A person violating this chapter is guilty of a misdemeanor and shall be fined not less than twenty-five dollars (\$25) nor more than three hundred dollars (\$300).

History: En. Sec. 51, Ch. 216, L. 1911; re-en. Sec. 3625, R. C. M. 1921; Sec. 3-1211, R. C. M. 1947; amd. and redes. 3-1218 by Sec. 62, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment renumbered this section; and made minor changes in punctuation and phraseology.

**3-1219. Co-operation—agreements with other governmental agencies.** The director may co-operate with and enter into agreements with governmental agencies of this state, other states and agencies of the federal government in order to carry out the purpose and provisions of this chapter.

History: En. 3-1219 by Sec. 1, Ch. 149, L. 1975.

chapter 12, R. C. M. 1947, to authorize the director of agriculture to enter into agreements with other agencies of government both state and federal.

#### Title of Act

An act to add a new section to Title III,

## CHAPTER 13—ORCHARDS—VEGETABLE AND PLANT DISEASE CONTROL—QUARANTINE

#### Section

- 3-1301. Importation and sale of infected fruits and vegetables prohibited.
- 3-1302. Quarantine of orchards.

- 3-1303. Expenses of eradicating orchard diseases—collection as tax.  
 3-1305. [Transferred.]  
 3-1306. Quarantine against insect pests and plant diseases in other states.  
 3-1308. Prohibition against receiving products from infected districts.  
 3-1309. Penalty.

**3-1301. (3626) Importation and sale of infected fruits and vegetables prohibited.** A person may not import into this state, sell, barter, or otherwise dispose of, offer for sale, or possess for sale or barter, any fruit or vegetable which is or has been infested with San Jose scale, or the larvae of the codling moth, or other insect pest or disease dangerous to agriculture. The fact that any fruit or vegetable bears the mark of any such insect, or is worm eaten by the larvae of the codling moth, or shows the effect of disease, is conclusive evidence that the fruit or vegetable is infected. Infected fruit or vegetables may be condemned and confiscated by the department of agriculture. Nothing in this section prevents the growers of the infected fruit or vegetable from manufacturing it into a by-product, or selling and shipping it to a by-product factory, after obtaining a written permit from the department.

**History:** En. Sec. 1935, Rev. C. 1907 by Sec. 1, Ch. 121, L. 1911; amd. Sec. 1, Ch. 99, L. 1915; re-en. Sec. 3626, R. C. M. 1921; amd. Sec. 1, Ch. 90, L. 1939; amd. Sec. 67, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment substituted "department of agriculture" and "department" in the last two sentences for "horticultural inspector"; and made minor changes in phraseology.

**3-1302. (3627) Quarantine of orchards.** (1) The department may quarantine an orchard or place where fruits are grown or kept, that is infested with an injurious disease or insect pest. The department may adopt rules governing quarantines, and regulating or restricting the use of quarantined fruits upon the premises, or the shipment or disposition of them as necessary to prevent the spreading of disease or diseases or insect pests.

(2) A person may not ship or dispose of diseased or infested fruit or fruit products in violation of the order of the department.

**History:** En. Sec. 52, Ch. 216, L. 1921; re-en. Sec. 3627, R. C. M. 1921; amd. Sec. 68, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for references to "commissioner of agriculture" in both subsections; deleted

a provision at the end of subsection (2) that a violator "shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in the sum of not less than twenty-five dollars nor more than three hundred dollars"; and made minor changes in style, punctuation and phraseology.

**3-1303. (3628) Expenses of eradicating orchard diseases—collection as tax.** When, under the direction or rules of the department, any money is spent by it to eradicate any disease or insect pest from an orchard or other place where fruits are grown or kept, the department shall notify the owner of the orchard or premises in writing of the amount spent plus an additional charge of twenty-five per cent (25%) of the amount spent. The notice shall be mailed to the last known address of the owner. If the owner fails to pay the amount spent by the department plus the additional charge of twenty-five per cent (25%), within thirty (30) days of the time the notice is sent, the department shall file a verified statement with the



county treasurer where the money was spent. The statement shall set forth the amount spent plus the additional charge of twenty-five per cent (25%), together with the correct description of the property on which the money was spent as it appears on the assessment roll of the county. The county treasurer shall add the amount contained in the statement to the taxes upon the property and shall collect them in the manner provided for collection of state and county taxes.

**History:** En. Sec. 53, Ch. 216, L. 1921; re-en. Sec. 3628, R. C. M. 1921; amd. Sec. 69, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment substituted "de-

partment" for references to "commissioner of agriculture" throughout the section; and made numerous changes in punctuation and phraseology.

### 3-1305. [Transferred.]

#### Compiler's Notes

Section 70, Ch. 218, Laws of 1974 re-numbered this section as sec. 3-3401.

**3-1306. (3631) Quarantine against insect pests and plant diseases in other states.** If the governor believes that any pest, gypsy moth, brown-tail moth, Mediterranean fruit-fly, potato wart, potato canker, black scab, potato ellworm, pea-weevil, alfalfa weevil, alfalfa blight, flax canker, or flax-wilt, or other fruit or plant disease or insect pest, dangerous or inimical to the horticultural or the agricultural industry, exists in certain localities in another state, territory, or country, or that conditions exist that render domestic horticultural stock or agricultural crops or plants likely to become diseased, he must by proclamation designate the localities. The governor shall prohibit the importation from those localities of any tubers, plants, nursery stock, fruit, or seeds or agricultural crops, plants, or seeds likely to introduce or spread infection, contagion, or insect pests into the state, except under restrictions he, after consulting with the department and the co-operative extension service, considers proper.

**History:** En. Sec. 1, Ch. 61, L. 1913; re-en. Sec. 3631, R. C. M. 1921; amd. Sec. 71, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment substituted "the

department and the co-operative extension service" at the end of this section for "the state board of horticulture, the commissioner of agriculture, or the state entomologist"; and made minor changes in phraseology.

**3-1308. (3633) Prohibition against receiving products from infected districts.** After publication of the governor's proclamation, a person may not knowingly receive any tubers, plants, nursery stock, fruit, seeds or agricultural crops, plants or weeds from a prohibited district, and a person may not transport, convey, sell, or use them in this state. A person who violates this section is subject to the penalty provided in section 3-1309 and is liable for the damages caused to a person by the importation or transportation.

**History:** En. Sec. 3, Ch. 61, L. 1913; re-en. Sec. 3633, R. C. M. 1921; amd. Sec. 72, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment rewrote this section. For prior version, see parent volume.

**3-1309. Penalty.** A person who violates this chapter is guilty of a misdemeanor and shall be fined not less than twenty-five dollars (\$25) nor more than three hundred dollars (\$300).

**History:** En. 3-1309 by Sec. 73, Ch. 218, L. 1974.

#### CHAPTER 14—STANDARD GRADES AND BRANDS FOR MONTANA FARM PRODUCTS

##### Section

**3-1401. Standard grades for Montana farm products.**

**3-1402. Definitions.**

**3-1403. Department to establish standard grades—notice required.**

**3-1404. Grading and branding of products required—labeling of culls.**

**3-1405. Unlawful to sell or transport products unless labeled, tagged, or branded—use of tags.**

**3-1406. Inspection of condition of products in storage or transit.**

**3-1407. Entry and inspection by department.**

**3-1408. Rules for enforcement—fees.**

**3-1409. Intent and purpose of act.**

**3-1410. Violation of provisions—penalty.**

**3-1401. (3633.1) Standard grades for Montana farm products.** The standard grades for Montana farm products and other farm products shall be limited to the United States grades covering the same products and shall conform in all respects and be identical with the latest standards established by the United States secretary of agriculture for the various commodities, and thus conforming shall be accepted as the legal standards for the state of Montana.

**History:** En. Sec. 1, Ch. 165, L. 1933;  
amd. Sec. 1, Ch. 79, L. 1969.

##### Amendments

The 1969 amendment inserted "and other farm products" after "Montana farm products."

**3-1402. (3633.2) Definitions.** Unless the context requires otherwise in this act:

(1) "Montana farm products" means all products of the farm grown commercially in Montana or elsewhere and intended for table use such as potatoes, cherries, and dry beans.

(2) "Other farm products" means all farm products which are not normally grown commercially in Montana such as grapefruit and oranges.

(3) "Container" or "package" means cloth or fibre sacks, barrel, box, crate, carton, hamper, or baskets, customarily used for the shipment of Montana farm products and other farm products.

(4) "Person" as used herein shall mean any grower, dealer, shipper, society, association, organization, corporation or their agents or representatives.

(5) The terms defined in subsections (1) and (2) do not include livestock and its by-products, poultry and its products, apiary products, dairy products, grain, or apples.

**History:** En. Sec. 2, Ch. 165, L. 1933;  
amd. Sec. 2, Ch. 79, L. 1969; amd. Sec. 74,  
Ch. 218, L. 1974.

##### Amendments

The 1969 amendment rewrote subdivision (1), changing the term defined from

"farm products" to "Montana farm products"; inserted a new subdivision (2), renumbering the remaining subdivisions; inserted "Montana" before "farm products" in subdivision (3); and added "and other farm products" to the end of subdivision (3).

The 1974 amendment changed the subdivision designations from small letters to numerals; deleted the definition of "commissioner" which read "shall mean the commissioner of agriculture of the Montana department of agriculture"; and made minor changes in style, punctuation and phraseology.

**3-1403. (3633.3) Department to establish standard grades—notice required.** (1) The department of agriculture shall establish United States standard grades on potatoes, dry beans, cherries and shall, as soon as any Montana farm product or other farm product reaches a volume rendering it of market importance, establish United States grades on that product.

(2) The grades become effective thirty (30) days after publication in the Montana administrative register. The department shall publish notice of the establishment of the standards two (2) times in at least three (3) papers of general circulation within the state.

**History:** En. Sec. 3, Ch. 165, L. 1933; amd. Sec. 3, Ch. 79, L. 1969; amd. Sec. 75, Ch. 218, L. 1974.

#### Amendments

The 1969 amendment, in subsection (a), (now subsection (1)), deleted provisions for standard grades for onion, head lettuce and cabbage, inserted "dry" before "beans" and "cherries" after "beans," and substituted "Montana farm product or other farm product" for "agricultural product"; in subsection (b), (now subsection (2)), inserted "and designate Montana farm products and other farm products"

after "establish grades."

The 1974 amendment substituted "department" in the caption and in subsection (1) for references to "commissioner of agriculture"; substituted subsection (2) for a subsection reading "The commissioner of agriculture shall establish grades and designate Montana farm products and other farm products by proclamation, giving thirty (30) days' notice of such action, and shall publish such proclamation two (2) times in at least three (3) papers of general circulation within the state"; and made minor changes in style and phraseology.

**3-1404. (3633.4) Grading and branding of products required—labeling of culls.** A person may not pack for sale, expose for sale, or sell, transport, deliver, or consign, or possess for sale, transport, delivery, or consignment in interstate or intrastate commerce:

(1) Montana farm products and other farm products prepared for market which are not graded and branded to meet the requirement of the grade declared. The grade declared shall conform to the provisions of this act.

(2) Other farm products, which includes products arriving or found in Montana in containers not graded and branded, must meet the requirements of United States No. 1 grade or better. Those products which do not grade United States No. 1 or better must be labeled or tagged with proper grade according to Montana inspection.

(3) Montana farm products and other farm products not conforming to established grades may be sold if labeled, tagged, or branded in the same manner as graded products, except that in place of specifying the grade, the word "culls" or "unclassified" shall be used.

(4) All products branded "unclassified" must contain at least fifty per cent (50%) of products which would grade United States No. 2, or better.



(5) Montana farm products and other farm products for seed purposes may be sold when graded under rules approved by the department of agriculture and plainly labeled, tagged, or branded "For Seed Purposes."

(6) Provided further that United States commercial grade is a standard grade in this state.

(7) Oranges labeled "choice" shall meet the requirements of the United States No. 2 grade or better for oranges.

History: En. Sec. 4, Ch. 165, L. 1933; amd. Sec. 1, Ch. 71, L. 1937; amd. Sec. 1, Ch. 30, L. 1963; amd. Sec. 4, Ch. 79, L. 1969; amd. Sec. 76, Ch. 218, L. 1974.

#### Amendments

The 1969 amendment designated the latter portion of subsection (a) (now the preliminary paragraph) as subdivision (1), inserted "Montana farm products and other" before "farm products prepared for

market," added subdivision (2); inserted "Montana farm products and other" before "farm products" in subsections (b) and (d) (now subdivisions (3) and (5)) and added subsection (f) (now subdivision (7)).

The 1974 amendment substituted "department" for "commissioner" in subdivision (5); and made minor changes in style, punctuation and phraseology.

**3-1405. (3633.5) Unlawful to sell or transport products unless labeled, tagged, or branded—use of tags.** (1) It is unlawful for any person, firm, association, organization, or corporation or agent, representative, or assistant to any person, firm, association, organization, or corporation to expose for sale or sell, transport, deliver, consign, or have in possession Montana farm products and other farm products prepared for market unless each container has been legibly and conspicuously tagged, branded, labeled, or stenciled before being moved from the premises of the person responsible for the grading and packing, to indicate the name of the grade, when applicable, together with the true net contents expressed in weight.

(2) When tags are used, United States No. 1 grade shall be declared on a white tag and United States No. 2 grade shall be declared on a red tag. Bulk shipments shall be accompanied by two cards not less than 4 x 6 inches in size placed on the inside of the car near each door. Likewise cards in size herein described shall be prominently placed on all bulk shipments made by truck or other conveyance. Upon each card shall appear the name and address of the consignor, the name of the grade, if applicable, the name of the loading station, the date of loading, and the name and address of the consignee, if known. It shall be conclusive evidence that the farm products are considered for sale when the containers are packed for delivery or transit, are exposed for sale, are in process of delivery or transit, or are located at a depot, station, boat dock, or any place where farm products or other products are held for storage or for immediate or future sale or transit.

History: En. Sec. 5, Ch. 165, L. 1933; amd. Sec. 5, Ch. 79, L. 1969; amd. Sec. 16, Ch. 13, L. 1977.

#### Amendments

The 1969 amendment, in subsection (a), inserted "Montana farm products and other" before "farm products" and "when applicable" after "the name of the

grade"; and in subsection (b), inserted "if applicable" after "the name of the grade."

The 1977 amendment redesignated subsections (a) and (b) as subsections (1) and (2); inserted "to indicate" near the end of subsection (1); and made minor changes in phraseology, punctuation and style.

**3-1406. (3633.6) Inspection of condition of products in storage or transit.** Montana farm products and other farm products held in storage or in transit which at the time of inspection show deterioration or decay but otherwise conform to the grade shall be inspected as to condition and not as to grade.

**History:** En. Sec. 6, Ch. 165, L. 1933; amd. Sec. 6, Ch. 79, L. 1969; amd. Sec. 17, Ch. 13, L. 1977.

farm products and other" at the beginning of this section.

The 1977 amendment substituted "conform to the grade" for "up to the grade"; and made minor changes in punctuation.

#### **Amendments**

The 1969 amendment inserted "Montana

**3-1407. (3633.7) Entry and inspection by department.** The department may enter upon premises where Montana farm products and other farm products are graded, packed, or stored, to inspect them as to grade, pack, and condition.

**History:** En. Sec. 7, Ch. 165, L. 1933; amd. Sec. 7, Ch. 79, L. 1969; amd. Sec. 77, Ch. 218, L. 1974.

The 1974 amendment substituted "department" at the beginning of the section for "commissioner of agriculture"; substituted the present caption for one reading "Enforcement of act"; and made minor changes in style and phraseology.

#### **Amendments**

The 1969 amendment inserted "Montana farm products and other" before "farm products."

**3-1408. (3633.8) Rules for enforcement—fees.** The department may adopt rules necessary for the enforcement of this act. The department may adopt rules to establish fees for inspection under this act.

**History:** En. Sec. 8, Ch. 165, L. 1933; amd. Sec. 78, Ch. 218, L. 1974; amd. Sec. 3, Ch. 155, L. 1975.

partment" for "commissioner of agriculture"; and made minor changes in phraseology.

The 1975 amendment added the second sentence.

#### **Amendments**

The 1974 amendment substituted "de-

**3-1409. (3633.9) Intent and purpose of act.** The intent and purpose of this act is to regulate the sale of Montana farm products and other farm products for table use intended for interstate or intrastate commerce when such is made by the grower, dealer or distributor, or any other person either by wholesale or retail or in any other manner; provided, however, that the provisions of this act shall not apply to the grower in the sale of the Montana farm products and other farm products grown by himself or to small retail packages.

**History:** En. Sec. 9, Ch. 165, L. 1933; amd. Sec. 8, Ch. 79, L. 1969.

tana farm products and other" before "farm products" in two instances in this section.

#### **Amendments**

The 1969 amendment inserted "Mon-

**3-1410. (3633.10) Violation of provisions—penalty.** A person who violates this act by not grading Montana farm products and other farm products, or by not tagging or branding containers, or by removing or altering any tag or brands placed upon or attached to any containers, unless ordered to do so by the department, is guilty of a misdemeanor. He shall be fined not less than ten dollars (\$10) nor more than one hundred

dollars (\$100), or imprisoned in the county jail not less than thirty (30) days nor more than three (3) months, or both fined and imprisoned.

History: En. Sec. 10, Ch. 165, L. 1933; amd. Sec. 9, Ch. 79, L. 1969; amd. Sec. 79, Ch. 218, L. 1974.

#### Amendments

The 1969 amendment inserted "Montana

farm products and other" before "farm products."

The 1974 amendment substituted "department" for "commissioner of agriculture" in the first sentence; and made minor changes in punctuation and phraseology.

### CHAPTER 15—MISCELLANEOUS POWERS AND DUTIES OF DEPARTMENT OF AGRICULTURE

#### Section

3-1510 to 3-1515. [Transferred.]

#### 3-1502 to 3-1509. (3636 to 3639, 3646 to 3649) Repealed.

##### Repeal

Sections 3-1502 to 3-1509 (Secs. 57 to 60, 67 to 70, Ch. 216, L. 1921; Sec. 1, Ch. 94, L. 1973), relating to the miscellaneous

powers and duties of the department of agriculture, were repealed by Sec. 173, Ch. 218, Laws 1974.

#### 3-1510 to 3-1515. [Transferred.]

##### Compiler's Notes

Sections 80 to 85, Ch. 218, Laws of 1974

renumbered these sections as secs. 90-701 to 90-706.

### CHAPTER 16—FARM PRODUCE DEALER—BOND AND LICENSE

(Repealed—Section 173, Chapter 218, Laws of 1974)

#### 3-1601 to 3-1603. (3649.1 to 3649.3) Repealed.

##### Repeal

Sections 3-1601 to 3-1603 (Secs. 1 to 3, Ch. 147, L. 1925), relating to farm produce

dealers' bonds, licensing, prohibited acts, and reports, were repealed by Sec. 173, Ch. 218, Laws 1974.

### CHAPTER 17—COMMERCIAL FERTILIZER—REGULATION OF SALE

#### Section

3-1714.1. [Transferred.]

3-1714.2. Definitions.

3-1714.3. Guaranteed analysis.

3-1715.1. Registration and licenses.

3-1716.1. Labeling.

3-1717.1. Fees.

3-1718. Inspection, sampling, analysis.

3-1720.1. Misbranding and adulteration—prohibition.

3-1721.1. Licensee reports—confidentiality—inspection—failure to file.

3-1722. Publications.

3-1723.1. Rules—adoption by department.

3-1724. Cancellation or refusal of registration or licenses.

3-1725.1. Enforcement—embargo order—condemnation.

3-1726.1. Plant food deficiency and commercial value.

3-1727. Violations—enforcement proceedings—judicial review.

3-1728. Exchanges between manufacturers.

3-1729. Assessment to fund educational and experimental programs—collection.

3-1730. Allocation of assessments.

3-1731. Educational and experimental programs.

3-1732. [Transferred.]

3-1734. Meetings and functions of advisory committee.



**3-1712, 3-1713. Repealed.****Repeal**

Sections 3-1712 and 3-1713 (Secs. 1, 2, Ch. 41, L. 1957), relating to the title of

the act and its administration by the commissioner of agriculture, were repealed by Sec. 173, Ch. 218, Laws 1974.

**3-1714. Repealed.****Repeal**

Section 3-1714 (Sec. 3, Ch. 41, L. 1957; Sec. 1, Ch. 43, L. 1963; Sec. 86, Ch. 218,

L. 1974), relating to definitions, was repealed by Sec. 17, Ch. 279, Laws 1975. For new law, see sec. 3-1714.2.

**3-1714.1. [Transferred.]****Compiler's Notes**

Section 2, Ch. 279, Laws of 1975 renumbered this section as sec. 3-1714.3.

**3-1714.2. Definitions.** As used in this chapter:

(1) "Commercial fertilizer" includes any substance containing one or more recognized plant nutrients which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth, yield or quality of the crop.

(a) "Fertilizer materials" is a commercial fertilizer which either:

(i) contains important quantities of not more than one of the primary plant nutrients (nitrogen, phosphoric acid and potash), or

(ii) has approximately eighty-five per cent (85%) of its plant nutrient content present in the form of a single chemical compound, or

(iii) is derived from a plant or animal residue or by-product or a natural material deposit which has been processed in such a way that its content of primary plant nutrients has not been materially changed except by purification and concentration.

(b) "Mixed fertilizers" is a commercial fertilizer (dry or liquid) containing any combination or mixture of fertilizer materials.

(c) "Specialty fertilizer" is a commercial fertilizer (dry or liquid) distributed primarily for nonfarm use, such as home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses, and nurseries and includes commercial fertilizers used for research or experimental purposes.

(d) "Bulk fertilizer" is commercial fertilizer (dry or liquid) distributed in nonpackage form, or in containers of greater than one thousand (1000) pounds.

(e) "Packaged fertilizer" is commercial fertilizer (dry or liquid) distributed in sealed containers of one thousand (1000) pounds or less.

(2) "Brand" means a term, design, or trade-mark used in connection with one (1) or several grades of commercial fertilizer.

(3) "Grade" means the percentages of total nitrogen, available phosphorus or phosphoric acid, and soluble potassium or soluble potash stated in whole numbers in the same terms, order, and percentages as in the guaranteed analysis. Provided, however, that fertilizer materials,

bone meal, manures and similar raw materials may be guaranteed in fractional units.

(4) "Official sample" means any sample of commercial fertilizer taken by the department of agriculture and so designated by the department.

(5) "Ton" means a net weight of two thousand (2000) pounds avoirdupois.

(6) "Per cent or percentage" means the percentage by weight.

(7) "Person" means an individual, partnership, association, firm, or corporation.

(8) "Distribute" means to offer for sale, sell, barter, or otherwise supply commercial fertilizers.

(9) "Distributor" means any person who distributes.

(10) "Registrant" means the person who registers commercial fertilizer and/or soil amendment.

(11) "Manipulated manures" means substances composed primarily of excreta, plant remains, or mixtures of such substances which have been processed in any manner, including the addition of plant nutrients, drying, grinding and other means.

(12) "Soil amendment" means any material not included under commercial fertilizer, or those products subject to the Federal Insecticide, Fungicide or Rodenticide Act as amended, which is added to soil or to plants for purposes of influencing the growth, yield or quality of the crop, soil flora or fauna or other soil characteristics.

(13) "Licensee" means any person who has obtained a license from the department so he may legally distribute commercial fertilizer other than specialty fertilizers or soil amendment in this state.

**History:** En. 3-1714.2 by Sec. 1, Ch. 279, L. 1975.

#### Title of Act

An act to generally revise and update commercial fertilizer laws, modifying and adding definitions, changing licensing requirements, raising fertilizer inspection

fees, establishing inspection fees for soil amendments, altering the tonnage reporting system, establishing an effective date; amending sections 3-1714.1, 3-1718, 3-1722, 3-1724, 3-1727, and 3-1728, R. C. M. 1947, and repealing sections 3-1714, 3-1715, 3-1716, 3-1717, 3-1720, 3-1721, 3-1723, 3-1725, and 3-1726, R. C. M. 1947.

**3-1714.3. Guaranteed analysis.** (1) Until the department prescribes the alternative form under subsection (2) of this section, "guaranteed analysis" means the minimum percentage of plant nutrients claimed in the following order and form:

(a) The following plant nutrients shall be guaranteed:

Total nitrogen (N) .....	%
Available phosphoric acid (P205) .....	%
Soluble potash (K20) .....	%

(b) For unacidulated mineral phosphatic materials and basic slag, bone meal, tankage, and other organic phosphatic materials, the total phosphoric acid and degree of fineness may also be guaranteed.

(c) Guarantees for plant nutrients other than nitrogen, phosphorus, and potassium may be permitted or required by rules adopted by the department. The guarantees for other nutrients shall be expressed in the form of the element. The sources of other nutrients including, but not limited to, oxides, salt, and chelates, may be required to be stated on the application for registration and may be included as a parenthetical statement on the label. Other beneficial substances or compounds, determinable by laboratory methods, also may be guaranteed by permission of the department.

(d) Potential basicity or acidity expressed in terms of calcium carbonate equivalent in multiples of 100 pounds per ton shall be guaranteed when required by regulation.

(2) If the department finds, after public hearing, that the requirement for expressing the guaranteed analysis of phosphorus and potassium in elemental form would not impose an economic hardship on distributors and users of fertilizer by reason of conflicting labeling requirements among the states, it may require by department rule that the guaranteed analysis be in the following form:

Total nitrogen (N) .....	%
Available phosphorus (P) .....	%
Soluble potassium (K) .....	%

(3) The effective date of the rule may not be less than 6 months following the adoption of the rule. For a period of 2 years following the effective date of the rule, the equivalent of phosphorus and potassium may also be shown in the form of phosphoric acid and potash. However, after the effective date of a rule requiring that phosphorous and potassium be shown in the elemental form, the guaranteed analysis for nitrogen, phosphorous, and potassium is the grade for those elements.

(4) Soil amendments shall guarantee the minimum quantity of each active ingredient in terms approved by the department or in terms as set forth in rules issued by the department. They shall also meet any other requirements established by rule by the department.

History: En. 4-1714.1 by Sec. 87, Ch. 218, L. 1974; amd. and redes. 3-1714.3 by Sec. 2, Ch. 279, L. 1975; amd. Sec. 18, Ch. 13, L. 1977.

#### Amendments

The 1975 amendment renumbered this section; incorporated former subdivision (1)(c) into subdivision (1)(b) and renumbered other subdivisions accordingly; deleted "except when prohibited by regulation" at the beginning to subdivision (1)(d); substituted "when required by regulation" for "may be shown" at the

end of subdivision (1)(d); and added subsection (4).

The 1977 amendment inserted "The following plant nutrients shall be guaranteed" at the beginning of subdivision (1)(a); deleted "When any plant nutrients or other substances or compounds are guaranteed, they are subject to inspection and analysis in accord with the methods and regulations prescribed by section 3-1718" at the end of subdivision (1)(c); inserted "shall be guaranteed" near the end of subdivision (1)(d); and made minor changes in phraseology, punctuation and style.

### 3-1715. Repealed.

#### Repeal

Section 3-1715 (Sec. 4, Ch. 41, L. 1957; Sec. 2, Ch. 43, L. 1963; Sec. 35, Ch. 147,

L. 1963; Sec. 1, Ch. 55, L. 1965; Sec. 88, Ch. 218, L. 1974), relating to fertilizer and soil amendment registration and dis-



tributor licensing, was repealed by Sec. 17, Ch. 279, Laws 1975, eff. Jan. 1, 1976. For new law, see sec. 3-1715.1.

**3-1715.1. Registration and licenses.** (1) Each brand and grade of fertilizer and each soil amendment except unmanipulated animal and vegetable manures, shall be registered by the manufacturer before distribution in this state. The application for registration shall be submitted to the department on a form furnished or approved by the department and shall be accompanied by a fee of ten dollars (\$10) per grade for each fertilizer and for each soil amendment with exception of specialty fertilizers in packages of ten (10) pounds or less which shall be registered at a fee of twenty-five dollars (\$25) each. Upon approval, the department shall furnish a copy of the registration to the applicant. All registrations expire on December 31 of each year. The application for registration shall include:

- (a) the brand and grade;
- (b) the guaranteed analysis;
- (c) the source of each plant food element guaranteed;
- (d) the name and address of the registrant;
- (e) a copy or facsimile of each label and of promotional material when requested by the department.

Further, the department shall require the applicant to furnish replicated data, performed by a reputable investigator whose work is recognized as acceptable by the director of the agricultural experiment station or his designee, verifying any claims for effectiveness or agricultural value of any fertilizer or soil amendment product which is not generally recognized as having the values claimed at the use rates recommended.

(2) A distributor may not be required to register any brand or grade of commercial fertilizer which is already registered under this section by another person.

(3) The plant nutrient content of every brand and grade of commercial fertilizer shall remain uniform for the period of registration.

(4) No person shall distribute in this state any type of fertilizer or soil amendment, except unmanipulated animal or vegetable manures, or specialty fertilizer, until a license to distribute has been obtained, for each facility distributing into this state and for each handling facility in this state, from the department upon payment of a fifty dollar (\$50) fee for each license. The department may exempt, by rule, manufacturers. All licenses expire on December 31 of each year and are subject to the following:

(a) The application for license shall be on forms provided by the department.

(b) The applicant shall provide a sample copy of labeling to be used. The form of labeling shall meet department standards, established by rule, and all labeling shall be in proper form.

(c) The licensee is not required to register a grade of fertilizer registered by the manufacturer, or blended to grade from registered products by the licensee.

(5) The manufacturer or distributor shall at all times deliver a uniform grade of fertilizer or soil amendment. When two (2) or more fertilizers are delivered in the same load, they shall be thoroughly and uniformly mixed unless they are in separate compartments.

History: En. 3-1715.1 by Sec. 3, Ch. 279, L. 1975.

### 3-1716. Repealed.

**Repeal** Section 3-1716 (Sec. 5, Ch. 41, L. 1957; Sec. 3, Ch. 43, L. 1963), relating to labeling requirements, was repealed by Sec. 17, Ch. 279, Laws 1975, eff. Jan. 1, 1976. For new law, see sec. 3-1716.1.

**3-1716.1. Labeling.** (1) Any commercial fertilizer distributed in this state in packages shall have affixed to or printed on the container a label setting forth in clearly legible and conspicuous form:

- (a) the net weight;
- (b) the name and address of the manufacturer or distributor guaranteeing the analysis;
- (c) the brand and product name;
- (d) the grade;
- (e) the guaranteed analysis; and
- (f) other requirements as established by rule.

(2) All commercial fertilizer delivered in this state in bulk, whether a manufactured grade or blended grade, shall be accompanied by a clearly legible document, which shall be supplied to the purchaser at the time of delivery, and at the time his invoice is delivered. The document shall show:

- (a) net weight;
- (b) name and address of the distributor or manufacturer guaranteeing the analysis;
- (c) guaranteed analysis, or, on blended fertilizer, the net weight and guaranteed analysis of each ingredient added; and
- (d) other requirements as established by rule.

(3) When distributed in containers, soil amendments shall have a label affixed to or printed on the container. When delivered in bulk the label shall be clearly legible and shall accompany the delivery of the product. This label shall be supplied to the purchaser at the time of delivery and at the time of invoicing. The label shall contain the following information:

- (a) net weight;
- (b) name and address of the registrant or licensee who is responsible for the product;
- (c) brand and product name;
- (d) guaranteed analysis;

(e) other requirements, such as particle size, as established by rule.

History: En. 3-1716.1 by Sec. 4, Ch. 279, L. 1975.

### 3-1717. Repealed.

#### Repeal

Section 3-1717 (Sec. 6, Ch. 41, L. 1957; Sec. 36, Ch. 147, L. 1963; Sec. 6, Ch. 248, L. 1965; Sec. 89, Ch. 218, L. 1974), re-

lating to inspection fees, was repealed by Sec. 17, Ch. 279, L. 1975, eff. Jan. 1, 1976. For new law, see sec. 3-1717.1.

**3-1717.1. Fees.** (1) There shall be paid to the department fees on all commercial fertilizer, except specialty fertilizers sold in packages of ten (10) pounds or less, and unmanipulated animal and vegetable manures distributed in this state, provided that sales to manufacturers or exchanges between them are exempt. The fees are:

(a) Inspection, twenty cents (\$.20) per ton. The department may by rule after hearing, adjust the inspection fee not to exceed a maximum of twenty-five cents (\$.25) per ton to maintain adequate funding for the administration of this act. Any change in fee becomes effective on the first day of a reporting period. All registrants shall be given notice of any change in fees before the effective date.

(b) Assessment, the fee prescribed in section 3-1729. The assessment fee shall be used to fund educational and experimental programs as provided in sections 3-1729, 3-1730, 3-1731 and 3-1734, R. C. M. 1947.

(2) There shall be paid to the department on all soil amendments distributed in this state an inspection fee of ten cents (\$.10) per ton subject to the following provisions:

(a) sales to manufacturer's or exchanges between them are exempt; and

(b) when less than fifty (50) tons of registered soil amendment is sold per six (6) month period, there shall be paid to the department a fee of five dollars (\$5) per soil amendment per six (6) month period in lieu of the ten cents (\$.10) per ton fee. Inspection fees shall be used by the department for administration of this act.

(3) Every registrant and licensee who distributes a soil amendment or commercial fertilizer, except specialty fertilizer in packages of ten (10) pounds or less and unmanipulated manures, to an unlicensed or unregistered person, in this state shall file with the department on forms furnished or approved by the department a semiannual statement for the periods ending June 30 and December 31 setting forth the number of net tons of each commercial fertilizer and/or soil amendment distributed in this state during the six (6) month period. The report is due on or before the thirtieth day of the month following the close of each period. The registrant or licensee shall pay the proper fees, as set forth in subsection (1) of this section, at that time.

If the tonnage report is not filed and the payment of fees is not made within thirty (30) days after the end of the period a collection fee amounting to ten per cent (10%) of the amount due but not less than ten dollars (\$10) shall be assessed against the registrant or licensee, and the amount



of fees due shall constitute a debt and become the basis of a judgment against the registrant or licensee.

(4) All fees collected for licenses, registration and inspection, and moneys collected as penalties shall be deposited in the state treasury to the credit of the earmarked revenue fund for the purpose of administering this chapter, including the cost of equipment and facilities and the cost of inspecting, analyzing and examining commercial fertilizer and soil amendments manufactured or distributed in this state. Reserve funds may be invested by the department with interest credited to the earmarked revenue fund.

History: En. 3-1717.1 by Sec. 5, Ch. 279, L. 1975.

**3-1718. Inspection, sampling, analysis.** (1) The department, in cooperation with the agricultural experiment station of Montana state university, shall sample, inspect, analyze, and test commercial fertilizers and soil amendments distributed in this state at a time and place and to an extent necessary to determine whether the commercial fertilizers or soil amendments are in compliance with this chapter. The department may enter upon any public or private premises during regular business hours in order to have access to commercial fertilizers or soil amendments subject to this chapter.

(2) The methods of analysis and sampling shall be those adopted by the department from sources such as those of the association of official analytical chemists. The results of analysis, together with additional information the department considers advisable, shall be transmitted promptly to the manufacturer and to the dealer or person in whose possession the product was sampled.

(3) The department, in determining whether any commercial fertilizer is deficient in plant food, or soil amendment is deficient, shall be guided solely by the official sample obtained and analyzed as provided for in paragraphs (1) and (2) of this section.

(4) If on the basis of an inspection or the analysis of the official sample a commercial fertilizer or soil amendment is found to be subject to penalty or other legal action, the department shall forward to the registrant notification of the violation at least ten (10) days before its report is made public. If during that period no adequate evidence to the contrary is made available to the department, the report becomes official. Upon request, the department shall furnish to the registrant a portion of any sample found subject to penalty or other legal action.

History: En. Sec. 7, Ch. 41, L. 1957; amd. Sec. 90, Ch. 218, L. 1974; amd. Sec. 6, Ch. 279, L. 1975.

#### Amendments

The 1974 amendment substituted the present first sentence in subsection (1) for "At the request of the commissioner of agriculture, the chemist of the agricultural experiment station of Montana state college or his deputy shall sample, in-

spect, make analysis of and test commercial fertilizers distributed within this state at time and place and to such an extent as he may deem necessary to determine whether such commercial fertilizers are in compliance with the provisions of this act"; substituted "department" for "commissioner" throughout the section; substituted "department may enter" in subsection (1) for "chemist, individually or through his deputy, is author-

ized to enter"; substituted "department" for "chemist" in two places in subsection (2); substituted "analytical chemists" for "agricultural chemists" in subsection (2); deleted "for administrative purposes" after "determining" in subsection (3); substituted "its report" for "report of the chemist" in the first sentence of subsection (4); substituted "department" for "chemist

of the agricultural experiment station at Montana state college" in the last sentence of subsection (4); and made minor changes in phraseology, punctuation and style.

The 1975 amendment inserted references to "soil amendments" throughout the section.

### 3-1720. Repealed.

#### Repeal

Section 3-1720 (Sec. 9, Ch. 41, L. 1957), relating to false or misleading statements,

was repealed by Sec. 17, Ch. 279, Laws 1975, eff. Jan. 1, 1976. For new law, see sec. 3-1720.1.

**3-1720.1. Misbranding and adulteration—prohibition.** No person shall distribute a misbranded or adulterated fertilizer or soil amendment. (1) A commercial fertilizer or soil amendment is misbranded if it:

(a) carries any false or misleading statement upon or attached to the container, or if false or misleading statements concerning its agricultural value are made on the container or in any advertising matter accompanying or associated with the product;

(b) is distributed under the name of another product;

(c) is not labeled as required in section 3-1716.1 and in accordance with rules prescribed under this act; or

(d) purports to be or is represented as a commercial fertilizer, or is represented as containing a plant nutrient or commercial fertilizer, unless that plant nutrient or commercial fertilizer conforms to the definition of identity, if any, prescribed by rule of the department. In adopting this type rule the department shall give due regard to commonly accepted definitions and official fertilizer terms as issued by the association of American plant food control officials.

**History:** En. 3-1720.1 by Sec. 7, Ch. 279, L. 1975.

### 3-1721. Repealed.

#### Repeal

Section 3-1721 (Sec. 10, Ch. 41, L. 1957; Sec. 91, Ch. 218, L. 1974), relating to

grade-tonnage reports, was repealed by Sec. 17, Ch. 279, Laws 1975, eff. Jan. 1, 1976. For new law, see sec. 3-1721.1.

#### **3-1721.1. Licensee reports—confidentiality—inspection—failure to file.**

(1) Information contained in the reports shall be held confidential by the department. Summary data published by the department shall be in a form that will not disclose details of any operation or business.

(2) The department has the right to inspect and audit, during normal business hours, each licensee's records for the purpose of verifying tonnage reports.

(3) Failure to file an accurate report constitutes a violation of this act and may be punished by fine, revocation of license, or both.

**History:** En. 3-1721.1 by Sec. 8, Ch. 279, L. 1975.

**3-1722. Publications.** The department shall publish at least annually information concerning the sales of commercial fertilizers and soil amendments together with data on their production and use as it considers advisable, and shall report the results of the analysis based on official samples of commercial fertilizers and soil amendments sold in this state.

**History:** En. Sec. 11, Ch. 41, L. 1957; amd. Sec. 92, Ch. 218, L. 1974; amd. Sec. 9, Ch. 279, L. 1975.

#### Amendments

The 1974 amendment substituted "de-

partment" for "commissioner"; deleted "in such forms as he may deem proper" before "information"; and made minor changes in phraseology.

The 1975 amendment inserted "and soil amendments" in two places.

### 3-1723. Repealed.

#### Repeal

Section 3-1723 (Sec. 12, Ch. 41, L. 1957; Sec. 5, Ch. 43, L. 1963; Sec. 93, Ch. 218, L. 1974), relating to rules and hearings,

was repealed by Sec. 17, Ch. 279, Laws 1975, eff. Jan. 1, 1976. For new law, see secs. 3-1723.1 and 3-1724.

**3-1723.1. Rules—adoption by department.** (1) The department may adopt those rules for commercial fertilizer and soil amendment which are specifically authorized in this act and those other reasonable rules necessary for the efficient enforcement of this act.

(2) In adopting rules the department shall follow procedures prescribed in the Montana Administrative Procedure Act.

**History:** En. 3-1723.1 by Sec. 10, Ch. 279, L. 1975.

**3-1724. Cancellation or refusal of registration or licenses.** (1) The department may cancel the registration of any commercial fertilizer or soil amendment and may refuse to register any commercial fertilizer or soil amendment upon satisfactory evidence that the registrant has used fraudulent or deceptive practices in the evasion or attempted evasion of this chapter or any rules adopted under it. However, no registration may be revoked or refused until the registrant is given the opportunity to amend his application or correct other practices.

(2) The department may cancel any license or refuse to license any person when it has satisfactory evidence that the person has used fraudulent or deceptive practice in the evasion or attempted evasion of this chapter or any rules adopted under it. However, no license may be revoked or refused until the person involved is given the opportunity to appear for a hearing by the department.

**History:** En. Sec. 13, Ch. 41, L. 1957; amd. Sec. 6, Ch. 43, L. 1963; amd. Sec. 94, Ch. 218, L. 1974; amd. Sec. 11, Ch. 279, L. 1975.

#### Amendments

The 1974 amendment substituted "department" for "commissioner" in two places; substituted "chapter" for "act" in the first clause; and made minor changes in phraseology.

The 1975 amendment designated the former section as subsection (1); inserted "or soil amendment" after "commercial fertilizer" in subsection (1); substituted "amend his application or correct other practices" for "appear for a hearing by the department, as provided in section 3-1723" at the end of subsection (1); added subsection (2); and made minor changes in phraseology.



### 3-1725. Repealed.

#### Repeal

Section 3-1725 (Sec. 14, Ch. 41, L. 1957; Sec. 95, Ch. 218, L. 1974), relating to

"stop sale" orders, was repealed by Sec. 17, Ch. 279, Laws 1975, eff. Jan. 1, 1976. For new law, see sec. 3-1725.1.

**3-1725.1. Enforcement — embargo order — condemnation.** (1) When the department has reasonable cause to believe any lot of commercial fertilizer or soil amendment is in violation of this act or a rule adopted by the department, it may issue and enforce a written or printed embargo order, requiring the person holding the commercial fertilizer or soil amendment not to dispose of it in any manner until written permission is granted by the department or the court. The department shall release the product when this act and the rules of the department have been complied with. If compliance is not obtained within thirty (30) days, the department may begin, or upon the request of the registrant or the person holding the product shall begin, proceedings for condemnation.

(2) Commercial fertilizer or soil amendment not in compliance with this act or the rules of the department may be seized on complaint of the department to a district court in the area in which the product is located. If the court finds the product in violation of this act and orders its condemnation, the fertilizer or amendment shall be disposed of in any manner consistent with the quality of the product and state law. The disposition of the product may not be ordered by the court without first giving the owner or person from whom the product was seized an opportunity to apply to the court for release of the product or for permission to process or relabel the product to bring it into compliance with this act.

History: En 3-1725.1 by Sec. 12, Ch. 279, L. 1975.

### 3-1726. Repealed.

#### Repeal

Section 3-1726 (Sec. 15, Ch. 41, L. 1957; Sec. 96, Ch. 218, L. 1974), relating to seizure, condemnation, and sale, was re-

pealed by Sec. 17, Ch. 279, Laws 1975, eff. Jan. 1, 1976. For new law, see sec. 3-1725.1.

**3-1726.1. Plant food deficiency and commercial value.** (1) Penalty for nitrogen, available phosphoric acid or phosphorus and potash or potassium. If the analysis shows that a commercial fertilizer is deficient:

(a) in one or more of its guaranteed primary plant foods (NPK) beyond the "investigational allowance" as established by regulation, or

(b) if the overall index value of the fertilizer is below the level established by regulations, a penalty of two (2) times the commercial value of that deficiency, as determined by the dealer or manufacturer's price on the date of sampling of the deficiency or deficiencies, shall be assessed. When a commercial fertilizer is subject to a penalty under both (a) and (b) the larger penalty applies.

(2) Penalty for other deficiencies—deficiencies beyond the investigational allowances as established by regulation in any other constituent covered under section 3-1714.3 (1)(b), (c) and (d), R. C. M. 1947, which

the registrant is required to or may guarantee, shall be evaluated and penalties shall be assessed at two times the commercial value of the deficiency as determined by the dealer's retail price on the date of sampling.

(3) Nothing contained in this section shall prevent any person from appealing the department's decision to a court of competent jurisdiction.

(4) All penalties assessed under this section shall be paid to the consumer of the lot, not to exceed one hundred (100) tons, of commercial fertilizer represented by the sample analyzed within three (3) months after the date of notice from the department to the registrant or licensee. If at the end of the three (3) month period, the consumer cannot be found, receipts shall be taken and promptly forwarded to the department for deposit in the earmarked revenue fund as provided in section 3-1717.1.

History: En. 3-1726.1 by Sec. 13, Ch. 279, L. 1975.

**3-1727. Violations—enforcement proceedings—judicial review.** (1) If it appears from the examination of any commercial fertilizer that this chapter or the rules adopted under this chapter have been violated, the department shall give notice of the violations to the registrant, licensee, distributor, or possessor from whom the sample was taken. A person notified shall be given an opportunity to be heard under rules of the department. If it appears after a hearing, either in the presence or absence of the person notified, that this chapter or rules issued under this chapter have been violated, the department may certify the facts to the proper prosecuting attorney.

(2) A person who violates this chapter or the rules adopted under this chapter, or who obstructs, prevents, or attempts to prevent the department from performing its duty under this chapter, is guilty of a misdemeanor and shall be fined not less than three hundred dollars (\$300) nor more than five hundred dollars (\$500) for the first violation, and not less than three hundred dollars (\$300) nor more than one thousand dollars (\$1,000) for a subsequent violation. In all prosecutions under this chapter involving the composition of a lot of commercial fertilizer, a certified copy of the official analysis of the department is prima facie evidence of the composition.

(3) Nothing in this chapter requires the department to report for prosecution or for the beginning of seizure proceedings minor violations of this chapter when it believes that the public interest will be best served by a suitable notice of warning in writing.

(4) A prosecuting attorney to whom a violation is reported shall prosecute the violator in a court of competent jurisdiction without delay.

(5) The department may apply for and the court may grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule adopted under the chapter notwithstanding the existence of other remedies at law. The injunction shall be issued without bond.

(6) If a person adversely affected by an act, order, or ruling made by the department under this chapter is not entitled to a hearing before the

department to determine his rights, he may within forty-five (45) days, sue in the district court of any county where the alleged violation giving rise to the department's act, order, or ruling occurred, for new trial of the issues bearing upon the act, order, or ruling. After the trial the court may issue and enforce those orders, judgments, or decrees it considers proper, just, and equitable.

**History:** En. Sec. 16, Ch. 41, L. 1957; amd. Sec. 2, Ch. 55, L. 1965; amd. Sec. 97, Ch. 218, L. 1974; amd. Sec. 14, Ch. 279, L. 1975.

#### Amendments

The 1974 amendment substituted "chapter" for "act" and "department" for "commissioner" throughout the section; substituted "A person who violates" at the beginning of subsection (2) for "Any person convicted of violating"; substituted

"of the department" after "analysis" in subsection (2) for "signed by the chemist"; substituted "If a person \* \* \* to determine his rights, he may" in subsection (6) for "Any person adversely affected by an act, order or ruling made pursuant to the provisions of the act may"; and made minor changes in phraseology, punctuation and style.

The 1975 amendment inserted "licensee" after "registrant" in the first sentence of subsection (1).

**3-1728. Exchanges between manufacturers.** Nothing in this act shall be construed to restrict or avoid sales or exchanges of commercial fertilizers or soil amendment to each other by importers, manufacturers, or manipulators who mix fertilizer materials for sale or as preventing the free and unrestricted shipments of commercial fertilizer or soil amendment to manufacturers, or manipulators who have registered their brands and grades or licensed their facilities as required by the provisions of this act.

**History:** En. Sec. 17, Ch. 41, L. 1957; amd. Sec. 15, Ch. 279, L. 1975.

#### Amendments

The 1975 amendment inserted "or soil amendment" after "commercial fertilizers" in two places; and inserted "or licensed their facilities" near the end of the section.

#### Separability Clause

Section 16 of Ch. 279, Laws 1975 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this

act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

#### Repealing Clause

Section 17 of Ch. 279, Laws 1975 read "Sections 3-1714, 3-1715, 3-1716, 3-1717, 3-1720, 3-1721, 3-1723, 3-1725, and 3-1726, R. C. M. 1947, are repealed."

#### Effective Date

Section 18 of Ch. 279, Laws 1975 read "This act is effective January 1, 1976."

**3-1729. Assessment to fund educational and experimental programs—collection.** Moneys to fund this act will be produced by an assessment of 35 cents per ton of fertilizer sold within Montana. Collections shall be made in accordance with procedures in 3-1717.1 and shall be collected from the licensee or "registrant" of fertilizer.

**History:** En. Sec. 1, Ch. 397, L. 1971; amd. Sec. 19, Ch. 13, L. 1977.

#### Title of Act

An act providing for an assessment on fertilizer to produce funds for the Montana co-operative extension service and the Montana agricultural experiment station of Montana state university, Bozeman, for a statewide fertilizer and related soil

management program of education and research correlated with soil testing; providing an effective date; and providing an expiration date.

#### Amendments

The 1977 amendment substituted "3-1717.1" for "sections 3-1717 and 3-1721, R. C. M. 1947"; and inserted "licensee or" before "registrant."



**3-1730. Allocation of assessments.** The assessment shall be collected by the department and up to one per cent (1%) shall be retained by the department for costs of collection. The balance shall be deposited in the earmarked revenue fund with fifty per cent (50%) for use by the co-operative extension service and fifty per cent (50%) for use by the agricultural experiment station in programs recommended by the fertilizer advisory committee provided for in section 82A-513 and approved by the respective directors.

**History:** En. Sec. 2, Ch. 397, L. 1971; amd. Sec. 98, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "Montana department of agriculture" and "department of agriculture" in the first sentence; and substituted the second sentence, relating to the deposit of the balance of moneys collected, for "and the balance will be deposited in an

earmarked revenue fund with fifty per cent (50%) for use by the Montana co-operative extension service and fifty per cent (50%) for use by the Montana agricultural experiment station of Montana state university, Bozeman, in programs recommended by the advisory committee, established in section 4 [3-1732] of this act, and approved by the respective directors."

**3-1731. Educational and experimental programs.** The moneys provided by this act shall be used for comprehensive statewide educational and experimental programs aimed at optimum use of fertilizers for feed and food production.

Major goals are to improve Montana's economy by providing farmers and ranchers the most accurate information possible about fertilizer use and soil management for greatest profits consistent with environment protection on the many varied soil and climatic conditions of the state.

**History:** En. Sec. 3, Ch. 397, L. 1971.

#### 3-1732. [Transferred.]

##### Compiler's Notes

Section 99, Ch. 218, Laws of 1974 re-numbered this section as sec. 82A-513.

#### 3-1733. Repealed.

##### Repeal

Section 3-1733 (Sec. 5, Ch. 397, L. 1971), relating to the term of office of the ferti-

lizer advisory committee, was repealed by Sec. 173, Ch. 218, Laws 1974. For new law see sec. 82A-513.

**3-1734. Meetings and functions of advisory committee.** The advisory committee shall meet a minimum of once each year with the directors of Montana co-operative extension service and agricultural experiment station to perform the following functions: (1) Review the educational and experimental programs financed by this act.

(2) Recommend needed programs and/or program adjustments.

(3) Report to the Montana house and/or senate agriculture committees as requested.

**History:** En. Sec. 6, Ch. 397, L. 1971.

##### Effective Date

Section 7 of Ch. 397, Laws 1971 was

amended by Section 1 of Ch. 24, Laws 1974 to read: "This act shall become effective on March 15, 1971."

# CHAPTER 19—MUSTARD SEED—GRADE REQUIREMENTS—PURCHASER'S BOND AND LICENSE

## Section

- 3-1901. Standard classes of mustard seed—grade requirements.  
 3-1902. Definitions and specifications.  
 3-1903. Weights per bushel.  
 3-1906. Administration.  
 3-1907. Penalty.  
 3-1908. License and bond for persons contracting for purchase of mustard seed—when required—deposit of fees—revocation of licenses.  
 3-1909. Enforcement.

## 3-1901. Standard classes of mustard seed—grade requirements. (1)

The standard classes of mustard seed for the state of Montana shall be as follows:

- (a) fancy—cultivated tame yellow mustard seed;
- (b) class 1—cultivated tame yellow mustard seed;
- (c) class 2—cultivated tame brown mustard seed;
- (d) class 3—cultivated tame Montana oriental mustard seed;
- (e) class 4—mixed cultivated tame mustard seed.

(2) Classes 1, 2, and 3 shall contain not more than 5% of other classes. Class 4 shall be any mixture of cultivated tame mustard seed having an admixture of other classes in excess of 5% and shall be graded according to the predominating class in the mixture.

## (3) Grade requirements for cultivated tame mustard seed

Percentage figures determined  
after the removal of dockage

### GRADE NUMBER

	Fancy	1	2	3
Sound Cultivated Mustard not less than	99%	98½%	97 %	95 %
Damaged Kernels				
Heat Damaged	0	0.1 %	0.2 %	0.5%
Total	1%	1½%	3 %	5 %
Other Classes				
Wild Mustard	0	0.1 %	0.2 %	0.5%
Total	0	0.5 %	2.0 %	5.0%
Foreign Material Other Than Dockage				
Cockle Seed	0	0.1 %	0.2 %	0.3%
Weed Seed	0	0.3 %	0.5 %	0.7%
Total	0	1 %	1½%	2 %

Sample: Sample grade shall include mustard seed which does not come within the requirements of any of the grades, No. 1 to No. 3, inclusive, or

which has any objectionable foreign odor or is sour, heating, hot, or is otherwise of distinctly low quality or contains small inseparable stones or cinders.

**History:** En. Sec. 1, Ch. 35, L. 1941; amd. Sec. 1, Ch. 170, L. 1957; amd. Sec. 20, Ch. 13, L. 1977.

#### Amendments

The 1977 amendment inserted the subsection and subdivision designations; deleted "Sample—Hereinafter defined" after subdivision (1)(e); deleted a definition of

"sample grade" at end of subsection (2) identical to definition following table; substituted "Percentage figures determined" near the beginning of subsection (3) for "Based"; substituted "weed seed" near the end of the table in subsection (3) for "total weed seed content"; and made minor changes in phraseology, punctuation and style.

**3-1902. Definitions and specifications.** The following definitions and specifications are hereby adopted and made legal:

(1) "Damaged seeds" include all seeds and pieces of seeds of mustard seed which are completely covered with mold, very green, sprouted, frosted, badly ground damaged, badly weather damaged, or otherwise distinctly damaged.

(2) "Heat damaged seeds" include seeds and pieces of seeds of mustard seed which have been distinctly discolored by external heat or as a result of heating caused by fermentation.

(3) "Dockage" includes sand, dirt, weed seeds, weed stems, chaff, straw, mustard seed other than tame mustard, and any other foreign material which can be removed readily from the mustard by the use of appropriate sieves, cleaning devices, or other practical means suited to separate the foreign material present. The term also includes undeveloped, shriveled, and small pieces of mustard seeds removed in properly separating the foreign material which cannot be recovered by properly rescreening or recleaning. The quantity of dockage shall be calculated in terms of percentage. When less than  $\frac{1}{2}$  of 1% it shall be disregarded. The percentage of dockage so determined and stated shall be added to the grade designation. Dockage is to be calculated in gradients of  $\frac{1}{2}$  of 1% that is to say 0% to .4% will be designated as no dockage, .5% to .9% will be designated as  $\frac{1}{2}$  of 1% dockage, 1% to 1.4% will be designated as 1% dockage, 1.5% to 1.9% will be designated as 1.5% dockage, and so on.

(4) "Foreign material other than dockage" includes all matter other than tame cultivated mustard seed which is not separated in the proper determination of dockage. However, rapeseed, common wild mustards, and other seeds that blend with class 2 and class 3 mustard seed and thus are not readily identified and the total of which is not in excess of 2.5% shall not be considered foreign material and shall not be considered in grading such classes of mustard seed.

(5) Each determination of dockage, temperature, moisture, odor, and content of live weevil or other insects injurious to stored mustard seed shall be upon the basis of the seed as a whole.

(6) Percentages, except in the case of moisture, shall be percentages ascertained by weight.

(7) Percentage of moisture shall be that ascertained by use of the equipment and procedure prescribed by the department of agriculture.



(8) Percentage of dockage shall be that ascertained by use of the equipment and procedure prescribed by the department of agriculture.

(9) The test weight per bushel shall be the weight per winchester bushel as determined by the testing apparatus and the method of use thereof prescribed by the department or as determined by any device and method which give equivalent results in the determination of test weight per bushel.

(10) Determination of the percentage of damage, heat damage, sound cultivated mustard seed, and foreign material and determinations of all other factors not otherwise provided for shall be on the basis of a portion cut from the original sample and separated by hand picking.

**History:** En. Sec. 2, Ch. 35, L. 1941; amd. Sec. 1, Ch. 31, L. 1971; amd. Sec. 21, Ch. 13, L. 1977; amd. Sec. 6, Ch. 315, L. 1977.

#### Compiler's Notes

This section was amended twice in 1977, once by Ch. 13 and once by Ch. 315. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

#### Amendments

The 1971 amendment added to the first paragraph of subdivision (4) the language following the semicolon therein; substituted "use of the equipment and procedure prescribed by the Montana department of agriculture" for "the Brown-Duval Moisture Tester and the method of use thereof described in U. S. D. A. Bulletin No. 1375 for testing flaxseed" in subdivision (6); and substituted "use of the equipment and procedure prescribed by the Montana department of agriculture" for "the Farrell Clipper Tester and Cleaner or any other cleaning device that will give equivalent results" in subdivision (7).

Chapter 13, Laws of 1977, designated the second paragraph of subdivision (4) as subdivision (5); deleted "Basis of determination" at the beginning of subdivision (5); inserted "content of" before "live weevil" near the beginning of subdivision (5); renumbered former subdivisions (5) through (9) as subdivisions (6) through (10); substituted "prescribed by the department" in the middle of subdivision (9) for "described in Bulletin 1065 U. S. D. A. dated May 18, 1922"; and made minor changes in phraseology, punctuation and style.

Chapter 315, Laws of 1977, designated the second paragraph of subdivision (4) as subdivision (5); deleted "Basis of determination" at the beginning of subdivision (5); inserted "moisture" near the middle of subdivision (5); deleted "All other determinations shall be upon the basis of the seed when free from dockage" at the end of subdivision (5); renumbered former subdivisions (5) through (9) as subdivisions (6) through (10); and made minor changes in phraseology, punctuation and style.

**3-1903. Weights per bushel.** (1) Legal test weights per bushel are the weight per Winchester bushel as determined by the testing apparatus and the method of use thereof prescribed by the department or as determined by any device and method which give equivalent results in the determination of test weight per bushel.

(2) Weight per bushel for tame yellow mustard seed shall be:

Fancy .....	56 lbs.
No. 1 .....	54 lbs.
No. 2 .....	52 lbs.
No. 3 .....	50 lbs.

(3) Weight per bushel for tame brown and tame Montana oriental mustard seed shall be:

No. 1 .....	52 lbs.
No. 2 .....	51 lbs.
No. 3 .....	50 lbs.

(4) All seeds weighing less than the above per bushel shall be graded as sample weight, provided that the percentage of damage, heat damage, sound cultivated mustard seed, and foreign material and determination of all other factors not otherwise provided for shall be on the basis of a portion cut from the original sample and separated by hand picking.

**History:** En. Sec. 3, Ch. 35, L. 1941; amd. Sec. 2, Ch. 170, L. 1957; amd. Sec. 22, Ch. 13, L. 1977.

#### Amendments

The 1977 amendment inserted the sub-

section designations; substituted "prescribed by the department" in subsection (1) for "described in Bulletin 1065 U. S. D. A. dated May 18, 1922"; and made minor changes in phraseology and punctuation.

**3-1906. Administration.** The department shall administer and enforce this act. The department may adopt necessary rules to administer and enforce this act. The department shall fix the fees for inspection and weighing of mustard seed and the fees are a lien upon the mustard seed until paid. The fees shall be collected by the department. The department shall deposit the fees with the state treasurer who shall deposit them in the earmarked revenue fund. All operating expenses of this act shall be paid from those fees.

**History:** En. Sec. 6, Ch. 35, L. 1941; amd. Sec. 37, Ch. 147, L. 1963; amd. Sec. 100, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "commissioner" throughout the section; substituted "The fees shall

be collected \* \* \* earmarked revenue fund" for "and such fees shall be collected by the commissioner of agriculture or his duly authorized representatives and the commissioner of agriculture shall deposit such fees with the state treasurer in the earmarked revenue fund"; and made minor changes in phraseology and punctuation.

**3-1907. Penalty.** Anyone violating any of the terms of this act shall upon conviction be guilty of a misdemeanor and shall be fined not less than \$25 or more than \$100.

**History:** En. Sec. 7, Ch. 35, L. 1941; amd. Sec. 7, Ch. 315, L. 1977.

#### Amendments

The 1977 amendment substituted "or" for "nor"; and made minor changes in style.

**3-1908. License and bond for persons contracting for purchase of mustard seed—when required—deposit of fees—revocation of licenses.** (1) All persons, firms, partnerships, corporations, and associations engaging in the business of contracting in advance of harvesting for the purchase of mustard seed crops to be paid for on delivery of the crops shall, before March 1 of each year, pay to the state treasurer a license fee of \$10 and shall, before March 1 of each year, give a bond, with sureties approved by the department, in an amount the department may require but not less than \$10,000. The bond shall be conditioned upon the payment for the contracted seed at the price specified in the contract and upon the payment of the license fee. Upon the approval of the bond, the department shall issue the license for a period of 1 year.

(2) A person who begins the business described in subsection (1) of this section after March 1 of any year shall pay the license fee and furnish the bond before engaging in the business.

(3) A licensee under this section shall, at the request of the department, report the amount of seed contracted.

(4) All funds collected from license fees shall be deposited by the department with the state treasurer for credit to the general fund.

(5) The department may revoke for cause any license issued under this section.

History: En. Sec. 1, Ch. 64, L. 1939; amd. Sec. 101, Ch. 218, L. 1974; amd. Sec. 8, Ch. 315, L. 1977.

#### Amendments

The 1974 amendment substituted "department" for "commissioner" throughout the section; substituted "before March 1" in two places in subsection (1) for "on or before the first day of March"; deleted "for the privilege of carrying on such business" in subsection (1) after "fee of

ten dollars (\$10)"; deleted "good and sufficient" in subsection (1) before "sureties"; inserted "The bond shall be" in subsection (1) before "conditioned upon the payment"; added subsections (3), (4) and (5); and made minor changes in phraseology, punctuation and style.

The 1977 amendment substituted "partnerships" near the beginning of the first sentence of subsection (1) for "copartnerships"; and made minor changes in phraseology and punctuation.

**3-1909. Enforcement.** The department shall enforce this act, and for that purpose shall adopt necessary and proper rules.

History: En. Sec. 2, Ch. 64, L. 1939; amd. Sec. 102, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment substituted the present language for "It is hereby made

the duty of the commissioner of agriculture to administer and enforce this act, and for that purpose he shall make all necessary and proper rules and regulations."

### 3-1910, 3-1911. Repealed.

#### Repeal

Sections 3-1910 and 3-1911 (Secs. 3, 4, Ch. 64, L. 1939; Sec. 38, Ch. 147, L. 1963), relating to disposal of funds accruing from

license fees and revocation of licenses, were repealed by Sec. 173, Ch. 218, Laws 1974. For new law see sec. 3-1908.

## CHAPTER 20—COMMERCIAL FEEDS—REGULATION

### Section

3-2025. Definitions.

3-2026. Enforcement official.

3-2027. Permits—registration—fees—refusal and cancellation.

3-2028. Labeling.

3-2029. Misbranded feed.

3-2030. Adulterated feed.

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3-2033. Deposit of fees.

3-2034. Rules—adoption by department.

3-2035. Enforcement—inspection—notice—sampling and analysis.

3-2036. Enforcement—embargo order—condemnation.

3-2037. Misdemeanor—injunction—appeal.

3-2038. Co-operation with other agencies.

3-2039. Publications.

### 3-2012 to 3-2024. Repealed.

#### Repeal

Sections 3-2012 to 3-2024 (Secs. 1 to 13, Ch. 127, L. 1963; Secs. 7, 8, Ch. 248, L. 1965), relating to commercial feeds,

were repealed by Sec. 17, Ch. 356, Laws 1973. For new law see secs. 3-2025 to 3-2039.



**3-2025. Definitions.** Unless the context requires otherwise, in this act:

(1) "Person" means an individual, partnership, corporation and association.

(2) "Distribute" means to offer for sale, sell, exchange or barter commercial feed.

(3) "Distributor" means a person who distributes.

(4) "Commercial feed" means all materials except the mixed or unmixed whole seeds or physically altered mixed or unmixed entire seeds of cereal grains with or without molasses added, when not adulterated within the meaning of section 6 (1) [3-2030 (1)], which are distributed for use as feed or for mixing in feed. However, the department by rule may exempt from this definition, or from specific provisions of this act, commodities such as hay, straw, stover, silage, cobs, husks, hulls and individual chemical compounds or substances when those commodities, compounds or substances are not intermixed or mixed with other materials, and are not adulterated within the meaning of section 6 (1) [3-2030(1)] of this act.

(5) "Feed ingredient" means each of the constituent materials making up a commercial feed.

(6) "Mineral feed" means a commercial feed intended to supply primarily mineral elements or inorganic nutrients.

(7) "Drug" means any article intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in animals other than man and articles other than feed intended to affect the structure or function of the animal body.

(8) "Custom-mixed feed" means commercial feed which consists of a mixture of either commercial feeds or feed ingredients or both of them, each batch of which is manufactured according to specifications mutually agreed to by the purchaser and the manufacturer. A copy of the specifications or a list of the ingredients, but not necessarily the percentage of each ingredient, shall be on file at the manufacturing facility.

(9) "Manufacture" means to grind, mix, blend or further process a commercial feed.

(10) "Brand name" means any word, name, symbol or device, or any combination of them identifying the commercial feed of a distributor or registrant and distinguishing it from that of others.

(11) "Product name" means the name of the commercial feed which identifies it as to kind, class or specific use.

(12) "Label" means a display of written, printed or graphic matter upon or affixed to the container in which a commercial feed is distributed, or on the invoice or delivery slip with which a commercial feed is distributed.

(13) "Labeling" means all labels and other written, printed or graphic matter upon a commercial feed, any of its containers, its wrapper or accompanying the commercial feed.

(14) "Ton" means a net weight of two thousand (2,000) pounds avoirdupois.

(15) "Per cent" or "percentages" means percentages by weights.

(16) "Official sample" means a sample of feed taken by the department in accordance with the provisions of section 11 (3), (5) or (6) [3-2035 (3), (5) or (6)] of this act.

(17) "Pet food" means any commercial feed prepared and distributed for consumption by pets.

(18) "Pet" means any domesticated animal normally maintained in or near the household of its owner.

(19) "Specialty pet food" means any commercial feed prepared and distributed for consumption by specialty pets.

(20) "Specialty pet" means any domesticated animal pet normally maintained in a cage or tank, including but not limited to, gerbils, hamsters, canaries, psittacine birds, mynahs, finches, tropical fish, goldfish, snakes and turtles.

**History:** En. Sec. 1, Ch. 356, L. 1973.

**Title of Act**

An act to regulate the manufacture, distribution and use of commercial feed in the state of Montana by requiring

registration with fee of products and facilities; setting inspection fees and establishing the method of collection; providing an effective date; and repealing sections 3-2012 through 3-2024, R. C. M. 1947.

**3-2026. Enforcement official.** This act shall be administered by the Montana department of agriculture.

**History:** En. Sec. 2, Ch. 356, L. 1973.

**3-2027. Permits—registration—fees—refusal and cancellation.** (1) No person may manufacture for distribution or distribute a commercial feed in this state unless he has obtained a permit by filing with the department, on forms provided by the department, his name, place of business, and location of manufacturing facility, distribution point, or point of invoicing. The applicant shall pay a fee of twenty-five dollars (\$25) per calendar year for each facility, distribution point or point of invoicing. A permit will remain in force until the end of the calendar year for which it is issued or until canceled by the permit holder or canceled for cause by the department. No refund may be made at the time of cancellation. No transfer of permits will be made. A distributor who distributes only pet foods or specialty pet foods is exempt from this provision.

(2) No person may distribute, in this state, a commercial feed, except a custom-mixed feed, which has not been registered under this section by the manufacturer. The application for registration shall be accompanied by a fee of five dollars (\$5) for each product other than a pet food or specialty pet food and a fee of twenty-five dollars (\$25) each for each pet food or specialty pet food. Upon approval by the department, a certificate of registration shall be continuous, provided that the annual fee is paid not later than December 31 of each year.

(3) The department may refuse registration of any commercial feed not in compliance with this act and may cancel any registration subsequently found not to be in compliance with this act. No registration may be refused or canceled unless the registrant has been given an opportunity

to be heard before the department and to amend his application in order to comply with this act.

**History:** En. Sec. 3, Ch. 356, L. 1973.

**3-2028. Labeling.** (1) A commercial feed, except a custom-mixed feed, shall be accompanied by a label containing:

- (a) the net weight;
- (b) the product name and any brand name under which the commercial feed is distributed;
- (c) the guaranteed analysis stated in terms the department by rule determines are required to advise the user of the composition of the feed or to support claims made in the labeling. The substances or elements guaranteed must be determinable by laboratory methods such as the methods published by the association of official analytical chemists;
- (d) the common or usual name of each ingredient used in the manufacture of the commercial feed. The department by rule may permit the use of a collective term for a group of ingredients which perform a similar function, or it may exempt commercial feeds, or any group of them from this requirement of an ingredient statement if it finds that the statement is not required in the interest of consumers;

(e) the name and principal mailing address of the manufacturer or the person responsible for distributing the commercial feed;

(f) adequate directions for use for all commercial feeds containing drugs. The department may by rule require directions for the use of other commercial feeds when necessary for their safe and effective use;

(g) precautionary statements which the department by rule determines are necessary for safe and effective use of the commercial feed.

(2) A custom-mixed feed shall be accompanied by a label, invoice, delivery slip, or other shipping document containing:

- (a) the name and address of the manufacturer;
- (b) the name and address of the purchaser;
- (c) the date of delivery;
- (d) the specific agreed to composition of the feed or a list of the ingredients, but not necessarily the percentage of each ingredient;
- (e) adequate directions for use for all custom-mixed feed containing drugs. The department may by rule require directions for the use of other custom-mixed feeds when necessary for their safe and effective use;
- (f) precautionary statements which the department by rule determines are necessary for safe and effective use of the custom-mixed feeds.

**History:** En. Sec. 4, Ch. 356, L. 1973.

**3-2029. Misbranded feed.** A commercial feed is misbranded if:

- (1) its labeling is false or misleading in any particular;
- (2) it is distributed under the name of another commercial feed;
- (3) it is not labeled as required in section 4 [3-2028] of this act;



(4) it purports to be or is represented as containing a commercial feed ingredient, unless the commercial feed or feed ingredient conforms to any definition prescribed by rule of the department;

(5) any word, statement, or other information required by this act to appear on the label is not prominently placed there with a conspicuousness (as compared with other words, statements, designs or devices in the labeling) and in terms which render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

History: En. Sec. 5, Ch. 356, L. 1973.

**3-2030. Adulterated feed.** (1) A commercial feed is adulterated if:

(a) it contains any poisonous or deleterious substance which may render it injurious to health. However, if the substance is not an added substance, the commercial feed shall not be considered adulterated under this subsection if the quantity of the substance in the commercial feed does not ordinarily render it injurious to health;

(b) it contains any added poisonous, deleterious or nonnutritive substance which is unsafe within the meaning of section 406 of the Federal Food, Drug, and Cosmetic Act (other than one which is a pesticide chemical in or on a raw agricultural commodity or a food additive);

(c) it is, or it contains any food additive which is unsafe within the meaning of section 409 of the Federal Food, Drug, and Cosmetic Act;

(d) it is a raw agricultural commodity and it contains a pesticide chemical which is unsafe within the meaning of section 408 (a) of the Federal Food, Drug, and Cosmetic Act. However, where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under section 408 of the Federal Food, Drug, and Cosmetic Act and that agricultural commodity has been processed by canning, cooking, freezing, dehydrating or milling, the residue of the pesticide chemical remaining in or on the processed feed shall not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of the residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity, unless the feeding of the processed feed is likely to result in the pesticide residue in the edible product of the animal, which is unsafe within the meaning of section 408 (a) of the Federal Food, Drug, and Cosmetic Act;

(e) it is, or contains any color additive which is unsafe within the meaning of section 706 of the Federal Food, Drug, and Cosmetic Act.

(2) Any valuable constituents have been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefor.

(3) Its composition or quality falls below or differs from that stated on its label.

(4) It contains a drug and the methods used in or the facilities or controls used for its manufacture, processing or packaging do not conform to current good manufacturing practice rules adopted by the department to assure that the drug meets the requirement of this act as to safety and has the identity and strength and meets the quality and purity

characteristics which it is represented to possess. In formulating these rules, the department shall adopt the current good manufacturing practice regulations for medicated feed premixes and for medicated feeds established under the Federal Food, Drug, and Cosmetic Act, unless it determines that they are not appropriate to the conditions which exist in this state.

(5) It contains viable weed seeds in amounts exceeding the limits which the department established by rule.

History: En. Sec. 6, Ch. 356, L. 1973.

**3-2031. Prohibitions.** No person may:

(1) manufacture or distribute any commercial feed that is adulterated or misbranded;

(2) adulterate or misbrand a commercial feed;

(3) distribute agricultural commodities such as whole seed, hay, straw, stover, silage, cobs, husks and hulls which are adulterated within the meaning of section 6 (1) [3-2030 (1)] of this act;

(4) remove or dispose of a commercial feed in violation of an order under section 12 [3-2036] of this act;

(5) fail to register or obtain a permit in accordance with section 3 [3-2027] of this act;

(6) violate section 13 (6) [3-2037 (6)] of this act;

(7) fail to pay inspection fees and file reports as required by section 8 [3-2032] of this act.

History: En. Sec. 7, Ch. 356, L. 1973.

**3-2032. Inspection fees—filing of annual statement.** (1) An inspection fee shall be paid on all commercial feeds, except "pet foods" and "specialty pet foods" distributed in this state as follows:

(a) The inspection fee shall be set at ten cents (\$.10) per ton. However, after May 1975 the department may adjust the fee by rule to adequately fund the administration of this act. Adjustments shall be made only after holding a public hearing on the proposed changes as required in section 10 [3-2034] of this act and shall remain within the limits of five cents (\$.05) to twenty-five cents (\$.25) per ton. The effective date of any such rule adjusting fees will be January 1 of the calendar year following the issuance of such rule. All permit holders are to be notified immediately of any changes in fees.

(b) The feed manufacturer shall have primary responsibility for paying inspection fees; however, the distributor shall be held responsible for inspection fees if the manufacturer has not paid them.

(c) Inspection fees shall be paid on each commercial feed including feed ingredients that are defined as commercial feeds even though they are used in the manufacture of other commercial feeds. However, premixes prepared and used within a feed plant are exempt but not premixes or ingredients transferred from one plant to another even within the same organization.

(d) A person producing a commercial feed with a feed mixing plant at a feed lot, poultry, swine or dairy operation shall not be required to pay inspection fees on the commercial feeds produced and used in his feeding operation at the site but he will be responsible for any unpaid inspection fees on commercial feed purchased by him and on any commercial feed he produces and distributes other than in his feeding operations at the site.

(2) Each person who holds a permit as required in section 3 (1) [3-2027 (1)] of this act shall:

(a) file, not later than February 28 of each year, an annual statement setting forth the number of tons of commercial feeds distributed in this state during the preceding calendar year (January 1 through December 31); and upon filing such a statement shall pay the inspection fee at the rate stated in subsection (1) of this section. Inspection fees which have not been remitted to the department within fifteen (15) days following the due date shall have a penalty fee of ten per cent (10%) with a minimum of ten dollars (\$10) added to the amount due. The assessment of this penalty fee does not prevent the department from taking other action as provided in this act;

(b) keep those records which are necessary or are required by the department to indicate accurately the tonnage of commercial feed distributed in this state. The department may examine the records to verify statements of tonnage;

(c) make accurate and prompt reports as required. Failure to do so is sufficient cause for the department to cancel or refuse to reissue a permit.

History: En. Sec. 8, Ch. 356, L. 1973.

**3-2033. Deposit of fees.** (1) All fees collected for permits, registration, and inspection shall be deposited in the state treasury to the credit of the earmarked revenue fund for the purpose of administering this act, including the cost of equipment and facilities and the cost of inspecting, analyzing, and examining commercial feeds manufactured or distributed in this state and the cost of developing better analytical methods and means of evaluating the value or the potential toxic qualities of a feed.

(2) The department may direct the board of investments to invest funds from the earmarked revenue fund pursuant to the provisions of the unified investment program for state funds. The income from such investments shall be credited to the proper department account in the earmarked revenue fund.

History: En. Sec. 9, Ch. 356, L. 1973;  
amd. Sec. 5, Ch. 16, L. 1977.

existing section as subsection (1); added subsection (2); and made minor changes in punctuation and phraseology.

#### Amendments

The 1977 amendment designated the

**3-2034. Rules—adoption by department.** (1) The department may adopt those rules for commercial feeds and pet foods which are specifically authorized in this act and those other reasonable rules necessary for the efficient enforcement of this act. In the interest of uniformity the de-



partment shall adopt unless it determines that they are inconsistent with this act or are not appropriate to conditions which exist in this state:

(a) the official definitions of feed ingredients and official feed terms adopted by the association of American feed control officials and published in this official publication of that organization and,

(b) any rules adopted under the Federal Food, Drug, and Cosmetic Act as long as the department has the authority under this act to adopt that rule.

(2) In adopting rules the department will follow procedures prescribed in the Montana Administrative Procedure Act [82-4201 to 82-4225].

History: En. Sec. 10, Ch. 356, L. 1973.

**3-2035. Enforcement—inspection—notice—sampling and analysis.** (1) To enforce this act, the department, upon presenting appropriate credentials and a written notice to the owner, operator, or agent in charge may enter, during normal business hours, any factory, warehouse, or establishment within the state in which commercial feeds are manufactured, processed, packed or held, or enter any vehicle being used to transport or hold commercial feeds. The department may inspect at reasonable times and within reasonable limits and in reasonable manner any factory, warehouse, establishments or vehicle and all pertinent equipment, finished and unfinished materials, containers and labeling found in them. The inspection may include the verification of only those records and production and control procedures necessary to determine compliance with the good manufacturing practice rules adopted under section 6 (4) [3-2030 (4)] of this act.

(2) A separate notice shall be given for each inspection, but a notice is not required for each entry made during the period covered by the inspection. Each inspection shall be commenced and completed with reasonable promptness. Upon completion of the inspection, the person in charge of the facility or vehicle shall be so notified.

(3) If the officer or employee making the inspection of a factory, warehouse or other establishment has obtained a sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises he shall give the owner, operator or agent in charge a receipt describing the sample obtained.

(4) If the owner of a factory, warehouse or establishment described in subsection (1), or his agent, refuses to allow an inspection, the department may obtain from the district court a warrant directing the owner or his agent to allow inspection of the premises described in the warrant.

(5) To enforce this act, the department may enter upon any public or private premises including any vehicle of transport during regular business hours to obtain samples and examine records relating to distribution of commercial feeds.

(6) Sampling and analysis shall be conducted in accordance with methods published by the association of official analytical chemists or with other generally recognized methods.

(7) The results of all analyses of official samples shall be forwarded by the department to the person named on the label and to the purchaser. When the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded and upon request within thirty (30) days following receipt of the analysis the department shall furnish the registrant a portion of the sample.

(8) The department, in determining for administrative purposes whether a commercial feed is deficient in any component, shall be guided by the official sample as defined in subsection (16) of section 1 [3-2025 (16)] and obtained and analyzed as provided for in subsections (3), (5) and (6) of section 11 [3-2035 (3), (5) and (6)] of this act.

(9) All chemical analyses shall be performed co-operatively by the department and the Montana agricultural experiment station at Montana state university.

History: En. Sec. 11, Ch. 356, L. 1973.

**3-2036. Enforcement—embargo order—condemnation.** (1) When the department has reasonable cause to believe any lot of commercial feed is in violation of this act or a rule adopted by the department, it may issue and enforce a written or printed embargo order, requiring the person holding the commercial feed not to dispose of it in any manner until written permission is given by the department or the court. The department shall release the feed when this act and the rules of the department have been complied with. If compliance is not obtained within thirty (30) days, the department may begin or upon the request of the registrant or the person holding the commercial feed shall begin, proceedings for condemnation.

(2) Commercial feed not in compliance with this act or the rules of the department may be seized on complaint of the department to a district court in the area in which the commercial feed is located. If the court finds the commercial feed in violation of this act and orders its condemnation, it shall be disposed of in any manner consistent with the quality of the commercial feed and state law. The disposition of the commercial feed may not be ordered by the court without first giving the owner or person from whom the feed was seized an opportunity to apply to the court for release of the commercial feed or for permission to process or relabel the commercial feed to bring it into compliance with this act.

History: En. Sec. 12, Ch. 356, L. 1973.

**3-2037. Misdemeanor—injunction—appeal.** (1) A person who violates this act or who obstructs, prevents or attempts to obstruct or prevent the department in the performance of its duty under this act, is guilty of a misdemeanor and shall be fined not less than one hundred dollars (\$100) or more than three hundred dollars (\$300) for the first violation, and not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) for a subsequent violation.

(2) Nothing in this act requires the department to prosecute, begin seizure proceedings or issue an embargo order as a result of minor violations or when it believes the public interest will best be served by suitable notice of warning in writing.

(3) A county attorney to whom a violation is reported shall prosecute in a court of competent jurisdiction without delay. Before the department reports a violation for prosecution, an opportunity shall be given the distributor to present his view to the department.

(4) The department may apply for and the court may grant a temporary or permanent injunction restraining any person from violating this act or any rule adopted under this act notwithstanding the existence of other remedies at law. The injunction shall be issued without bond.

(5) Any person adversely affected by an act, order, or ruling made pursuant to the provisions of this act may within thirty (30) days seek judicial review in the district court where the person resides or has his place of business.

(6) A person who uses to his own advantage, or reveals to persons other than officers of the department or to the courts when relevant in a judicial proceeding, any information acquired under this act, concerning any method, records, formulations, or processes which as a trade secret is entitled to protection, is guilty of a misdemeanor and shall be fined not more than three hundred dollars (\$300), or imprisoned for not more than one (1) year, or both. However, the department may exchange information of a regulatory nature with the proper officials of the United States government, or of other states, who are similarly prohibited by law from revealing that information.

**History:** En. Sec. 13, Ch. 356, L. 1973.

**3-2038. Co-operation with other agencies.** The department may co-operate with and enter into agreements with governmental agencies of this state, other states, agencies of the federal government and private associations in order to carry out this act.

**History:** En. Sec. 14, Ch. 356, L. 1973.

**3-2039. Publications.** The department shall publish at least annually in a form it considers proper, information concerning the sale of commercial feed, data on production and use and the results of analysis of official samples of commercial feeds sold within the state as compared with the analysis guaranteed in the registration and on the label. The information concerning production and use of commercial feed shall not disclose the operations of any person.

**History:** En. Sec. 15, Ch. 356, L. 1973.

#### **Separability Clause**

Section 16 of Ch. 356, Laws 1973 read "If any clause, sentence, paragraph or part of this act is for any reason judged invalid by a court of competent jurisdiction, that judgment does not affect, impair or invalidate the remainder thereof but is confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which the judgment is rendered."

#### **Repealing Clause**

Section 17 of Ch. 356, Laws 1973 read "Sections 3-2012 through 3-2024, R. C. M. 1947, are repealed."

#### **Effective Date**

Section 18 of Ch. 356, Laws 1973 read "This act shall take effect and be in full force from and after the first day of January 1, 1974, except the department may and is hereby directed to adopt necessary rules as authorized in section 10 of this act as soon as practical so they can become effective January 1, 1974."



## CHAPTER 21—BABY ANIMALS

## Section

- 3-2110. Certain dealings in baby animals unlawful.  
 3-2111. Penalties.

**3-2101 to 3-2109. Repealed.****Repeal**

Sections 3-2101 to 3-2109 (Secs. 1 to 9, Ch. 154, L. 1941), relating to regulation

of the sale of poultry products, fruits and vegetables, were repealed by Sec. 173, Ch. 218, Laws 1974.

**3-2110. Certain dealings in baby animals unlawful.** It is unlawful for any person, firm or corporation other than a hatchery, feed store, or breeder of fowl or rabbits to sell, offer for sale, barter, or give away for commercial purposes baby chickens, ducklings, or other fowl, under three (3) weeks of age, or rabbits under two (2) months of age, as pets, toys, premiums or novelties or to color, dye, stain or otherwise change the natural color of baby chickens, ducklings, or other fowl, or rabbits or to bring or transport the same into the state; provided, however, that this act shall not be construed to prohibit the sale, dyeing, staining or otherwise changing of the natural color, or display of such baby chickens, ducklings, or other fowl, or such rabbits, in proper facilities by breeders or stores engaged in the business of selling for purposes of avicultural breeding and raising.

**History:** En. 3-2110 by Sec. 1, Ch. 233, L. 1974.

**Title of Act**

An act to govern, control and prevent

the sale, offering for sale, barter or giving away of baby chickens, ducklings, or other fowl, under three (3) weeks of age, or rabbits under two (2) months of age, as pets, toys, premiums or novelties.

**3-2111. Penalties.** Violation of this act is a misdemeanor and any person, firm, or corporation other than a hatchery, feed store, or breeder of fowl or rabbits violating any of the provisions of this act is, upon conviction, subject to a fine not exceeding the sum of one hundred dollars (\$100) or imprisonment for a period not exceeding thirty (30) days, or both.

**History:** En. 3-2111 by Sec. 2, Ch. 233, L. 1974.

## CHAPTER 22—POULTRY IMPROVEMENT

(Repealed—Section 6, Chapter 46, Laws of 1957; Section 1, Chapter 138, Laws of 1973)

**3-2201, 3-2201.1, 3-2202 to 3-2205. Repealed.****Repeal**

Sections 3-2201, 3-2201.1, 3-2202 to 3-2205 (Secs. 1 to 5, Ch. 141, L. 1945; Secs. 1 to 3, Ch. 46, L. 1957; Secs. 1 to 5, 10,

Ch. 59, L. 1961), regulating the poultry industry, were repealed by Sec. 1, Ch. 138, Laws 1973.

**3-2207. Repealed.****Repeal**

Section 3-2207 (Sec. 7, Ch. 141, L. 1945; Sec. 6, Ch. 59, L. 1961; Sec. 41, Ch. 147,

L. 1963), relating to disposition of fees under the poultry improvement act, was repealed by Sec. 1, Ch. 138, Laws 1973.

**3-2209 to 3-2212. Repealed.****Repeal**

Sections 3-2209 to 3-2212 (Secs. 9 to 12, Ch. 141, L. 1945; Secs. 4, 5, Ch. 46, L. 1957; Secs. 7 to 9, Ch. 59, L. 1961), relat-

ing to labeling and advertising in the poultry industry, and to violations of the poultry improvement act, were repealed by Sec. 1, Ch. 138, Laws 1973.

**CHAPTER 23—EGGS AND EGG DEALERS—LICENSE****Section**

3-2301. **Egg dealer's license—fee.**

3-2302. **Remittance of fees.**

3-2303. **Candling eggs intended for human consumption—candling defined.**

3-2305. **Certificate of candling or packing.**

3-2306. **Egg—when defined as unfit for human food.**

3-2308. **Notice to purchaser of grade of eggs.**

3-2310. **Rules to be adopted by department of livestock.**

3-2311. **Penalties.**

3-2313. **Licensed egg graders.**

3-2314. **Revocation of license.**

**3-2301. (2634.1) Egg dealer's license—fee.** (1) No person may buy, sell, or deal in eggs without first obtaining a license from the department of livestock for each establishment at which business is conducted. A licensee shall send to the department the reports which are requested by the department. The fee for the license is \$5 per year for dealers buying eggs for sale at retail. The fee for the license is \$20 per year for dealers buying eggs for resale at wholesale. All licenses shall be posted in a conspicuous place in each place of business. Licenses expire March 31 each year after the date of issuance.

(2) A person buying, selling, or dealing in eggs, a major portion of which are produced by his own fowl, or in amounts less than an average of 25 cases per month, is exempt from the requirements of this section.

**History:** En. Sec. 1, Ch. 189, L. 1931; amd. Sec. 1, Ch. 151, L. 1939; amd. Sec. 4, Ch. 121, L. 1965; amd. Sec. 1, Ch. 176, L. 1969; amd. Sec. 1, Ch. 310, L. 1974; amd. Sec. 1, Ch. 141, L. 1977.

**Amendments**

The 1969 amendment inserted "at retail" after "who does not buy and sell" in the first sentence and raised the license fee for wholesale dealers from \$20 to \$50.

The 1974 amendment substituted references to "department of livestock" and "department" for references to "commissioner of agriculture" and "commissioner" and made minor changes in phraseology.

The 1977 amendment inserted the subsection (1) designation; substituted the first sentence of subsection (1) for "A person who buys, sells, or deals in eggs, except a person or firm who does not buy and sell at retail more than an average of 25 cases of eggs per month for any one year, other than those produced by fowl owned by the person, shall obtain a license from the department of livestock for each establishment at which business is conducted"; reduced the license fee in the fourth sentence of subsection (1) from \$50 to \$20; added subsection (2); and made minor changes in phraseology, punctuation and style.

**3-2302. (2634.2) Remittance of fees.** All license fees shall be remitted to the department of livestock which shall deposit them in the state treasury to the credit of the general fund.

**History:** En. Sec. 2, Ch. 189, L. 1931; amd. Sec. 42, Ch. 147, L. 1963; amd. Sec. 2, Ch. 310, L. 1974.

**Amendments**

The 1974 amendment substituted "department of livestock which" for "department of agriculture, dairy division, who."

**3-2303. (2634.3) Candling eggs intended for human consumption—candling defined.** Every person engaged in the business of buying eggs intended for human consumption for resale shall maintain an adequate place for the proper candling and handling of the eggs by an egg grader licensed pursuant to this chapter or shall purchase only eggs which have already been properly candled and graded under the supervision of an egg grader licensed pursuant to this chapter. The term “candling” as used in this chapter means the careful examination, in a partially dark room or place, of the whole egg by means of a strong light.

**History:** En. Sec. 3, Ch. 189, L. 1931; amd. Sec. 2, Ch. 141, L. 1977.

**Amendments**

The 1977 amendment added “by an egg grader licensed pursuant to this chapter

or shall purchase only eggs which have already been properly candled and graded under the supervision of an egg grader licensed pursuant to this chapter” to the first sentence; and added the second sentence.

**3-2304. (4634.4) Repealed.**

**Repeal**

Section 3-2304 (Sec. 4, Ch. 189, L. 1931), relating to the definition of “candling,”

was repealed by Sec. 6, Ch. 141, Laws 1977.

**3-2305. (2634.5) Certificate of candling or packing.** Every person buying eggs for resale at retail, except persons or firms who do not buy and sell more than 25 cases of eggs per month, shall candle all eggs offered to him which have not been candled under supervision of a licensed egg grader and shall refuse to buy eggs unfit for human food as defined in 3-2306. “Rejects” shall be returned to the producer, if possible, or, if requested, the candling shall be done in the presence of the producer. A certificate shall be placed in or on every case of eggs, if candled and graded, in a manner which permits its easy reading and shall state exact grade and size, date of candling, or other date approved by the department of livestock, and name and address of packer. If not candled or graded the certificate should state “not candled or graded”, the name of the dealer, and when packed. The certificate shall be printed in letters large enough to be easily read.

**History:** En. Sec. 5, Ch. 189, L. 1931; amd. Sec. 2, Ch. 151, L. 1939; amd. Sec. 3, Ch. 141, L. 1977.

**Amendments**

The 1977 amendment substituted the third sentence for a sentence reading “A certificate shall be placed on the top layer of every case of eggs if candled and

graded, which should state exact grade and size, also date of candling, by whom candled and license number of licensee”; substituted the last sentence for a sentence reading “Such certificate shall be printed on card or sheets of paper not smaller in size than 2% by 4¼ inches”; and made minor changes in phraseology and punctuation.

**3-2306. (2634.6) Egg—when defined as unfit for human food.** Eggs hereinafter defined shall be deemed unfit for human food:

- (a) “Addled,” or “white rot” means an egg that is putrid or rotten.
- (b) to (i) \* \* \* [Same as parent volume.]
- (j) An egg that is smashed or broken so that the contents are leaking.
- (k) Eggs which are otherwise unwholesome or adulterated as such



term is defined pursuant to the Federal Food, Drug and Cosmetic Act, and rules and regulations promulgated under authority of this act.

**History:** En. Sec. 6, Ch. 189, L. 1931; amd. Sec. 3, Ch. 151, L. 1939; amd. Sec. 2, Ch. 176, L. 1969.

Subdivision (a) is reprinted to correct an error in the parent volume.

#### Amendments

The 1969 amendment added subdivisions (j) and (k).

#### Compiler's Notes

The definition of adulterated food in the Federal Food, Drug and Cosmetic Act is contained in United States Code, Tit. 21, sec. 342.

### 3-2307. (2634.7) Repealed.

#### Repeal

Section 3-2307 (Sec. 7, Ch. 189, L. 1931; Sec. 4, Ch. 151, L. 1939; Sec. 3, Ch. 176,

L. 1969), relating to labeling of imported eggs, was repealed by Sec. 3, Ch. 71, Laws 1973.

**3-2308. (2634.8) Notice to purchaser of grade of eggs.** It is unlawful for a person to sell, offer, or expose for sale at wholesale or retail any eggs for human consumption, without notifying the person purchasing or intending to purchase the eggs, of the exact grade or quality and size or weight of the eggs, according to the standards prescribed by the department of livestock, by stamping or printing on the container of the eggs, the grade or quality and size or weight, and if the eggs are offered for sale in bulk, without also displaying in a conspicuous place at the point where the eggs are offered or exposed for sale, a placard or sign printed in letters two (2) inches high, giving the grade, quality, size, weight, and date of grading. This act does not affect the sale of eggs by the producers when the consumer purchases the eggs at the place of production.

**History:** En. Sec. 8, Ch. 189, L. 1931; amd. Sec. 5, Ch. 151, L. 1939; amd. Sec. 1, Ch. 71, L. 1973; amd. Sec. 3, Ch. 310, L. 1974.

#### Amendments

The 1973 amendment substituted "department of livestock" for "commissioner of agriculture" in the first sentence; and

deleted "without placing a Montana State egg seal upon each carton, bag or other container in which eggs are sold, delivered or offered for sale at retail to the consumer" from the end of the first sentence.

The 1974 amendment made minor changes in phraseology and punctuation.

### 3-2309. (2634.9) Repealed.

#### Repeal

Section 3-2309 (Sec. 9, Ch. 189, L. 1931; Sec. 6, Ch. 151, L. 1939; Sec. 4, Ch. 310,

L. 1974), relating to the invoice showing the grade of eggs, was repealed by Sec. 6, Ch. 141, Laws 1977.

**3-2310. (2634.10) Rules to be adopted by department of livestock.** The department of livestock shall enforce this act and adopt rules necessary for the enforcement of this act, including rules for the processing, handling, and marketing of egg products whether shell, liquid, frozen, or dried.

**History:** En. Sec. 10, Ch. 189, L. 1931; amd. Sec. 4, Ch. 176, L. 1969; amd. Sec. 5, Ch. 310, L. 1974.

#### Amendments

The 1969 amendment added the provision for rules pertaining to "the processing,

handling, and marketing of egg products whether shell, liquid, frozen, or dried."

The 1974 amendment substituted "department of livestock" for "commissioner

of agriculture"; substituted "rules" for "rules and regulations"; and made minor changes in phraseology and punctuation.

**3-2311. (2634.11) Penalties.** Any person failing to comply with the provisions of this chapter or any rules adopted pursuant to this chapter is guilty of a misdemeanor and upon conviction for the first offense shall be punished by a fine of not less than \$25 or more than \$75. Upon conviction for the second or any subsequent violation of the foregoing provisions of the act the violator shall be fined not less than \$50 or more than \$200.

**History:** En. Sec. 11, Ch. 189, L. 1931; amd. Sec. 7, Ch. 151, L. 1939; amd. Sec. 4, Ch. 141, L. 1977.

#### Amendments

The 1977 amendment substituted "rules

adopted pursuant to this chapter" near the beginning of the first sentence for "provisions of this act"; and made minor changes in phraseology and style.

### 3-2312. (2634.12) Repealed.

#### Repeal

Section 3-2312 (Sec. 8, Ch. 151, L. 1939; Sec. 1, Ch. 13, L. 1957; Sec. 6, Ch. 121, L.

1965), requiring the commissioner of agriculture to provide a Montana egg seal, was repealed by Sec. 3, Ch. 71, Laws 1973.

**3-2313. (2634.13) Licensed egg graders.** Wholesale and retail dealers who handle more than 25 cases of eggs per month supplying eggs to consumers must, when selling candled eggs, sell only eggs candled by or under the supervision of experienced and licensed graders. The fee for a grader's license is \$5 per year. All candlers and graders must pass an examination required by the department of livestock. The license expires March 31 each year after the date of issuance.

**History:** En. Sec. 9, Ch. 151, L. 1939; amd. Sec. 1, Ch. 88, L. 1953; amd. Sec. 7, Ch. 121, L. 1965; amd. Sec. 6, Ch. 310, L. 1974; amd. Sec. 5, Ch. 141, L. 1977.

#### Amendments

The 1974 amendment substituted "department of livestock" for "commissioner of agriculture" at the end of the second sentence and made minor changes in phraseology.

The 1977 amendment substituted "must, when selling candled eggs, sell only eggs candled by or under the supervision of" near the end of the first sentence for "may employ only"; and made minor changes in style.

#### Repealing Clause

Section 6 of Ch. 141, Laws 1977 read "Sections 3-2304, 3-2309, and 3-2315, R. C. M. 1947, are repealed."

**3-2314. (2634.14) Revocation of license.** A license issued by the department of livestock under this chapter may be revoked by the department when the holder of the license fails to comply with the laws of this state which apply to the conduct of his business under the license. If a firm, person, or corporation whose license has been revoked by the department continues to buy, sell, or deal in eggs without a license, he is guilty of a misdemeanor and is subject to the penalties provided for in section 3-2311.

**History:** En. Sec. 10, Ch. 151, L. 1939; amd. Sec. 7, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "de-

partment of livestock" for "department" at the beginning of the first sentence; substituted "this chapter" for "this act" in the first sentence; substituted "department" for "commissioner of agriculture"

and "commissioner" in the first and second sentences; substituted "penalties provided for in section 3-2311" for "penalties of

this act herein provided" at the end of the section; and made minor changes in phraseology.

### 3-2315. Repealed.

#### Repeal

Section 3-2315 (Sec. 11, Ch. 151, L. 1939; Sec. 43, Ch. 147, L. 1963; Sec. 2, Ch. 71,

L. 1973), relating to the disposal of license fees, was repealed by Sec. 6, Ch. 141, Laws 1977.

## CHAPTER 24—MANUFACTURED DAIRY PRODUCTS

### Section

- 3-2404. Definitions of terms.
- 3-2488. General authority of department.
- 3-2489. Promulgation of minimum standards for milk or cream.
- 3-2490. Licensing of persons engaged in production of milk.
- 3-2491. Hearings—suspension, revocation or denial of license.
- 3-2492. Required records and reports—examination.
- 3-2493. Enforcement of laws and rules—violation as misdemeanor.
- 3-2494. Separability provision.
- 3-2495. New or amended rules—mailing—hearing—judicial review.
- 3-2496. Investigation of complaints and violations—injunction.
- 3-2497. Definitions.
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- 3-24-103. Sampling and testing by department.
- 3-24-104. Grading of milk—condemnation of unsafe milk.
- 3-24-105. Employment of grader, weigher, and sampler—license required—revocation of operator's license.
- 3-24-106. Renewal, suspension or revocation of license—grounds—hearing—appeal to district court.
- 3-24-107. License required to operate manufactured dairy products plant.
- 3-24-108. Names and addresses of producers furnished on request.
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- 3-24-111. Monthly report of plant operator—penalty.
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- 3-24-114. Department's right of entry into dairy or plants for inspection—penalty.
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- 3-24-117. Labeling of cheese containers—products to be kept at safe temperature.
- 3-24-118. Sanitary regulation of imported products.
- 3-24-119. Manufacturer's, wholesaler's or retailer's names to appear on package—use of codes and numbers permitted.
- 3-24-120. Sale or use of impure, colored, adulterated or unwholesome milk unlawful.
- 3-24-121. Manufacture, sale, or importation of products containing extraneous fats.
- 3-24-122. Filled dairy products unlawful—exceptions.
- 3-24-123. Manufactured products to conform to standards of identity.
- 3-24-124. Adulterating milk or cream unlawful.
- 3-24-126. Pasteurization required.
- 3-24-127. Pasteurization apparatus and records.
- 3-24-128. Pasteurization labeling.
- 3-24-129. License requirements applicable.
- 3-24-130. Antimonopoly statutes applicable.
- 3-24-131. Milk and manufactured dairy products to conform to standards.
- 3-24-132. Posting prices of butterfat required.
- 3-24-134. Requirements for containers and equipment.
- 3-24-135. Labeling of animal or vegetable fat contents on frozen desserts.
- 3-24-136. Labeling on manufactured dairy products to conform to requirements.
- 3-24-137. Penalties for violations.



3-24-138. Deceit in grade, measure, or test of milk and cream unlawful.

3-24-139. Penalty for violations—revocation of license.

### **3-2401 to 3-2403. (2620.1 to 2620.3) Repealed.**

#### **Repeal**

Sections 3-2401 to 3-2403 (Secs. 1 to 3, Ch. 93, L. 1929), relating to functions of the department of agriculture, were repealed by Sec. 51, Ch. 413, Laws 1971, effective January 1, 1972.

**3-2404. (2620.4) Definitions of terms.** For the purpose of this act, the following definitions are adopted:

(1) Butter is the clean, nonrancid product made by gathering the fat of fresh ripened milk or cream into a mass which also contains a small portion of the other milk constituents, with or without salt, and must contain not less than 80% of milk fat. No tolerance for deficiency in milk fat is permitted. Butter may also contain added coloring matter.

(2) Renovated butter or processed butter is the product made by melting and reworking, without the addition or use of chemicals or substances except whole milk, cream, or salt, and must contain not less than 80% of milk fat.

(3) Cheese is the sound, solid, and ripened product made from milk or cream by coagulating the casein with rennet or lactic acid, with or without ripening ferments and seasoning, and must contain in the water-free substance not less than 50% of milk fat, and not more than 39% of moisture. Cheese may also contain added coloring matter.

(4) Skimmed milk cheese is the sound, solid, and ripened product made from skim milk by coagulating the casein with rennet or lactic acid, with or without ripening ferments and seasoning.

(5) Ice cream is a frozen product made with pure, sweet milk, cream, skim milk, evaporated or condensed milk, evaporated or condensed skim milk, dry milk, dry skim milk, pure milk fat, wholesome sweet butter, or any combination of these products, with or without sweetening, or clean wholesome eggs or egg products, with or without the use of harmless flavoring and coloring. Ice cream must contain not less than 10% of milk fat, not less than 33% total solids, and may or may not contain pure and harmless edible stabilizer. Ice cream may contain not to exceed 1% gelatin. No frozen milk or milk product may be manufactured or sold unless it contains at least 10% butterfat, excepting sherbets, ices, and other exceptions under this section. All ice cream must be manufactured from pasteurized ice cream mix.

(6) Fruit ice cream shall conform to the requirements of ice cream, except that the fruit ingredients must be from sound, clean, and mature fruit, and it must contain not less than 9% of milk fat.

(7) French ice cream, French custard ice cream, cooked ice cream, ice custard, parfaits, and similar frozen products, except sherbets and water ices, are varieties of ice cream.

(8) Ice cream mix is a pasteurized, unfrozen product used in the manufacture of ice cream and must comply with the requirements for ice cream.

(9) Milk sherbet is the pure, clean, frozen product made from milk product, water, and sugar, with harmless fruit or fruit juice flavoring and with or without harmless coloring, which must contain not less than 35/100 of 1% of acid, as determined by titrating with standard alkali and expressed as lactic acid, and with or without added stabilizer composed of wholesome edible material. It must contain not less than 4% by weight of solids.

(10) Ice or ice sherbet is the pure, clean, frozen product made from water and sugar with harmless fruit or fruit juice flavoring, with or without harmless coloring or added stabilizer composed of wholesome edible material, and must contain not less than 35/100 of 1% of acid, as determined by titrating with standard alkali and expressed as lactic acid. It may contain no milk solids.

(11) A creamery is a place where milk or cream furnished by three or more persons is used for manufacture into butter for commercial purposes.

(12) A cheese factory is a place where milk furnished by three or more persons is made into cheese for commercial purposes.

(13) An ice cream factory is a place where ice cream mix is frozen into ice cream for commercial purposes.

(14) An ice cream mix factory is a place where ice cream mix is made.

(15) A milk or cream buying or collecting station is a place where milk or cream is bought or collected for shipment or delivery to a creamery or to a person intending to make use of it for commercial purposes.

(16) Person includes persons, whether natural or artificial, including firms, partnerships, corporations, and marketing associations of every description.

(17) The term "department", unless otherwise indicated, means the department of livestock provided for in Title 82A, chapter 13.

(18) It is unlawful for a person, firm, or corporation or its servant or agent to manufacture, sell, or expose or offer for sale or exchange butter or other substance or commodity defined in this act containing less butterfat or other ingredient than required by this act. A violator is guilty of a misdemeanor and is punishable under 3-24-137.

**History:** En. Sec. 4, Ch. 93, L. 1929; amd. Sec. 1, Ch. 39, L. 1931; amd. Sec. 1, Ch. 68, L. 1937; amd. Sec. 8, Ch. 310, L. 1974; amd. Sec. 1, Ch. 12, L. 1977.

#### Amendments

The 1974 amendment substituted "department of livestock provided for in Title 82A, chapter 13" for "department of agriculture of the state of Montana" in subsection (17); inserted subsection designation (18); substituted "than required by this act" for "than herein required" at the end of the first sentence of subsection

(18); and made minor changes in phraseology, punctuation and style.

The 1977 amendment substituted "processed butter" in subdivision (2) for "process butter"; inserted "or" before "clean wholesome eggs" in the first sentence of subdivision (5); substituted "may contain" in the last sentence of subdivision (10) for "must contain"; substituted "partnerships" in subdivision (16) for "co-partnerships"; substituted "3-24-137" at the end of subdivision (18) for "section 3-2460"; and made minor changes in phraseology, punctuation and style.

### 3-2405 to 3-2431. (2620.5 to 2620.31) Repealed.

#### Repeal

Sections 3-2405 to 3-2431 (Secs. 5 to 28,

Ch. 93, L. 1929; Secs. 2 to 6, Ch. 39, L. 1931; Sec. 2, Ch. 68, L. 1937; Sec. 1, Ch.

134, L. 1953; Sec. 1, Ch. 45, L. 1961; Secs. 1, 2, Ch. 121, L. 1965; Sec. 5, Ch. 121, L. 1965), relating to licensing and other regu-

latory provisions, were repealed by Sec. 51, Ch. 413, Laws 1971, effective January 1, 1972.

### **3-2432, 3-2433. (2620.32, 2620.33) Repealed.**

#### **Repeal**

Sections 3-2432 and 3-2433 (Secs. 29, 30, Ch. 93, L. 1929; Sec. 7, Ch. 39, L. 1931; Sec. 1, Ch. 168, L. 1933), relating to

standard measures for dairy products, were repealed by Sec. 43, Ch. 99, Laws 1969.

### **3-2434. (2620.34) Repealed.**

#### **Repeal**

Section 3-2434 (Sec. 31, Ch. 93, L. 1929; Sec. 3, Ch. 68, L. 1937), relating to labeling

of creamery butter packages, was repealed by Sec. 51, Ch. 413, Laws 1971, effective January 1, 1972.

### **3-2436 to 3-2444. (2620.36 to 2620.44) Repealed.**

#### **Repeal**

Sections 3-2436 to 3-2444 (Secs. 33 to 39, Ch. 93, L. 1929; Secs. 8, 9, Ch. 39, L. 1931; Sec. 1, Ch. 98, L. 1941; Secs. 5, 6, Ch. 99,

L. 1953), relating to extraneous fats, butter, cheese and oleomargine, were repealed by Sec. 51, Ch. 413, Laws 1971, effective January 1, 1972.

### **3-2445, 3-2446. (2620.45, 2620.46) Repealed.**

#### **Repeal**

Sections 3-2445, 3-2446 (Secs. 40, 41, Ch. 93, L. 1929; Sec. 1, Ch. 87, L. 1931), relating to providing a license for the sale of

oleomargarine, filled cheese and substitutes for dairy products, were repealed by Sec. 59, Ch. 12, Laws 1977.

### **3-2447 to 3-2472. (2620.47 to 2620.72) Repealed.**

#### **Repeal**

Sections 3-2447 to 3-2472 (Secs. 42 to 55, Ch. 93, L. 1929; Secs. 10, 11, Ch. 39, L. 1931; Sec. 1, Ch. 39, L. 1933; Secs. 4 to

7, Ch. 68, L. 1937; Sec. 3, Ch. 121, L. 1965), relating to milk and cream, were repealed by Sec. 51, Ch. 413, Laws 1971, effective January 1, 1972.

### **3-2476 to 3-2487. Repealed.**

#### **Repeal**

Sections 3-2476 to 3-2487 (Secs. 1 to 12, Ch. 172, L. 1953; Sec. 1, Ch. 20, L. 1963),

relating to ice cream and animal fat, were repealed by Sec. 51, Ch. 413, Laws 1971, effective January 1, 1972.

**3-2488. General authority of department.** The department may regulate, and establish sanitation standards for persons operating dairies producing milk for manufacturing purposes. The department may regulate, and establish sanitation and quality standards for a person engaged in the processing of manufactured dairy products, or of products made or sold in the semblance or imitation of dairy products, in this state when those products made in semblance or imitation of dairy products are made in a manufactured dairy products plant.

**History:** En. Sec. 1, Ch. 413, L. 1971; amd. Sec. 9, Ch. 310, L. 1974.

#### **Title of Act**

An act to be known as the Manufactured Dairy Products Act, repealing all of the present dairy products act and regulations contained in Montana statutes, Title 3, sections 3-2401 through 3-2403; 3-2405

through 3-2431; 3-2434; 3-2436 through 3-2444; 3-2447 through 3-2472; 3-2476 through 3-2487; providing for the authority and duties of the commissioner of agriculture with respect to this act; defining those products and procedures regulated by this act; providing for the licensing and license fees for dairies producing milk for manufacturing purposes, and for



manufactured dairy products plants as defined; providing for the same licensing and regulatory authority for those non-dairy products made in the semblance or imitation of those products defined in this act; providing for the promulgation of rules and regulations necessary to carry out the intent and purpose of this act; providing for inspection of dairies providing milk for manufacturing purposes and of manufactured dairy products plants, and the enforcement of rules and regulations pertaining to the sanitary production, manufacture, collection, transportation, handling, storage, and display of products governed by this act; providing for the establishment of standards of composition, quality, purity, and wholesomeness for dairy and nondairy products defined in this act; authorizing and establishing procedures for the denial, suspension, or revocation, for cause, of licenses issued under authority of this act; providing for those test procedures, the

results of which, may be used as official and admissible evidence; providing authority for the commissioner of agriculture to make co-operative agreements with other state, federal, county, or municipal departments or agencies as may be needed to carry out the intent and purpose of this act; and providing for the penalties for violation of this act or of the rules and regulations adopted under the authority of this act; providing an effective date.

#### Amendments

The 1974 amendment substituted "department" for "commissioner" in the caption and for "commissioner of agriculture" at the beginning of the section; deleted provisions pertaining to a committee composed of dairymen and manufactured dairy products plant operators established to advise and assist in the development and modification of regulations; and made minor changes in phraseology and punctuation.

**3-2489. Promulgation of minimum standards for milk or cream.** The department may adopt minimum standards for the production, transportation, grading, testing, use, processing, packaging, and storage of milk and cream used for manufacturing purposes and of manufactured dairy products.

**History:** En. Sec. 2, Ch. 413, L. 1971; amd. Sec. 10, Ch. 310, L. 1974; amd. Sec. 2, Ch. 12, L. 1977.

#### Amendments

The 1974 amendment substituted "department" for "commissioner" and made a minor change in phraseology.

The 1977 amendment substituted the present section for "The department may adopt minimum standards for milk and cream used for manufacturing purposes; its production, transportation, grading, testing, use, processing, and the packaging, and storage of manufactured dairy products."

**3-2490. Licensing of persons engaged in production of milk.** (1) The department may license persons engaged in the production of milk for manufacturing purposes and license persons who manufacture dairy products, or products made in their semblance or imitation when the products are made in a manufactured dairy products plant.

(2) The department may examine and license weighers, graders, samplers, and milk and cream testers in order to establish the qualifications of these persons to perform those operations or tests for which the licenses are issued.

**History:** En. Sec. 3, Ch. 413, L. 1971; amd. Sec. 11, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment inserted the numerical subsection designations; substituted

"department may" for "commissioner or his authorized agents shall have authority to" in subsection (1); substituted "department may" for "commissioner shall have authority to" in subsection (2); and made minor changes in phraseology.

**3-2491. Hearings—suspension, revocation or denial of license.** The department may hold hearings on the suspension, revocation, or denial of licenses; and, for good cause, after notice and opportunity for hearing, may suspend, revoke, or deny licenses issued under this act.

**History:** En. Sec. 4, Ch. 413, L. 1971; partment may" for "commissioner shall  
amd. Sec. 12, Ch. 310, L. 1974. have authority to" and made minor  
changes in phraseology and punctuation.

#### Amendments

The 1974 amendment substituted "de-

**3-2492. Required records and reports—examination.** The department may require dairies and dairy product manufacturers to maintain and produce for examination, or to report, the records necessary for carrying out its duties under this act.

**History:** En. Sec. 5, Ch. 413, L. 1971; partment may" for "commissioner shall  
amd. Sec. 13, Ch. 310, L. 1974. have authority to" and made minor  
changes in phraseology.

#### Amendments

The 1974 amendment substituted "de-

**3-2493. Enforcement of laws and rules—violation as misdemeanor.**  
(1) The department shall supervise and enforce the laws and rules which pertain to the standards of quality and sanitation of cream, whole milk, skimmed milk, condensed milk, evaporated milk, and food additives used in manufacturing dairy products, and of manufactured dairy products.

(2) Rules adopted under this act have the effect of law, and violation of these rules is a misdemeanor, punishable as provided in the general penalties section of the act, unless a specific penalty has been provided.

**History:** En. Sec. 6, Ch. 413, L. 1971; subsection (1); substituted "and rules  
amd. Sec. 14, Ch. 310, L. 1974. which pertain to" for "and regulations of  
the state of Montana pertaining to" in  
subsection (1); deleted "and regulations"  
after "Rules" at the beginning of sub-  
section (2); and made minor changes in  
phraseology.

#### Amendments

The 1974 amendment inserted the commercial subsection designations; substituted "department" for "commissioner" in

**3-2494. Separability provision.** If any section, subdivision, phrase, or sentence of this act or of the rules and regulations promulgated under authority of this act is determined by a court of competent jurisdiction to be unconstitutional, it shall not affect the remaining portions of the act or regulations.

**History:** En. Sec. 7, Ch. 413, L. 1971.

**3-2495. New or amended rules—mailing—hearing—judicial review.**  
(1) Every new or amended rule proposed by the department under this act shall be mailed to each person licensed under this act who will be affected by the rule, at least forty-five (45) days before the date on which the rule becomes effective.

(2) On application in writing filed at least fifteen (15) days before the effective date of the proposal, by a person licensed under this act, the department shall vacate the effective date of the proposed rule and hold a public hearing on and take evidence concerning it. Within thirty (30) days after the conclusion of the hearing the department shall make written findings and conclusions and a written decision based on the hearing, determining whether the rule shall be adopted. A new or amended

rule adopted following the hearing and conclusion may not take effect until ninety (90) days after the date of the decision.

(3) The district court of the first judicial district has jurisdiction to review, modify, or set aside a decision adopting a new or amended rule under this act on petition made to it at any time before the effective date of the rule by a person claiming to be adversely affected by the decision.

**History:** En. Sec. 8, Ch. 413, L. 1971; amd. Sec. 15, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment inserted the numerical subsection designations; substituted

references to "department" for references to "commissioner" in subsections (1) and (2); deleted references to "regulations" throughout the section; and made minor changes in phraseology and punctuation.

**3-2496. Investigation of complaints and violations—injunction.** The department shall provide for periodic inspections and investigations to disclose violations of this act or of rules adopted under this act. The department shall receive and provide for the investigation of complaints and request the institution and prosecution of civil or criminal actions, or both. This act and the rules adopted under it may be enforced by injunction in a court having jurisdiction to grant injunctive relief. An adulterated, impure, contaminated, misbranded, condemned, or mislabeled article or product involved in a violation of this act or of the rules adopted under this act is subject to seizure and disposition under an order of the court.

**History:** En. Sec. 9, Ch. 413, L. 1971; amd. Sec. 16, Ch. 310, L. 1974; amd. Sec. 3, Ch. 12, L. 1977.

#### Amendments

The 1974 amendment substituted "department" for "commissioner" at the beginning of the section; deleted references to "regulations" throughout the section; and made minor changes in phraseology and punctuation.

The 1977 amendment inserted "and the rules" in the third sentence.

**3-2497. Definitions.** Unless the context requires otherwise in this act the following definitions apply:

(1) "Department" means the department of livestock provided for in Title 82A, chapter 13.

(2) "Milk" and "cream" mean milk and cream sold, used, or intended for manufacturing purposes or for conversion into products of a form other than the form in which originally produced or products commonly known as but not limited to:

- (a) Butter;
- (b) Cheese, including cottage cheese, low-fat cottage cheese, cheese curd, and cream cheese which are either cultured or directly acidified, and cheese dressings;
- (c) Ice cream or its mix;
- (d) Frozen dessert or its mix;
- (e) Sherbets of all kinds or their mixes;
- (f) Frozen ice cream bars, sandwiches, cones, and similar novelties;
- (g) Frozen desserts or products made in the semblance or imitation of frozen dessert;



- (h) Frozen confections or their mixes;
- (i) Water ices or their mixes;
- (j) Ice milk or its mix;
- (k) French ice cream, French custard, or their mixes;
- (l) Frozen custard or its mix and frozen yogurt;
- (m) Yogurt, flavored yogurt, and low-fat yogurt;
- (n) Sour cream—either cultured or directly acidified;
- (o) Cream cheese—either cultured or directly acidified;
- (p) Buttermilk—either cultured, from churned butter, or directly acidified;
- (q) Eggnog, low-fat eggnog, eggnog-flavored milk, whipped cream, flavored toppings, and similar flavored products;
- (r) Dry or powdered milk; and
- (s) Condensed milk products.

(3) The items specified in subsections (2)(a) through (2)(s) of this section shall conform to the standards of identity set forth in the Code of Federal Regulations. If standards of identity are not set forth in the code, then the standards adopted by the department prevail. The labeling of manufactured dairy products shall be in accordance with the Montana Food, Drug, and Cosmetic Act.

(4) "Manufactured dairy product" means an item enumerated in subsection (2) or any other dairy product made by incorporating milk or cream or converting milk or cream into a different state of appearance or quality.

(5) "Manufactured dairy products plant" or "factory" means a place where milk or cream is collected and converted into a product or into a different state of appearance or quality or which manufactures those products listed in subsection (2). If only products of semblance or imitation of dairy products are made, the plant is not considered as a manufactured dairy products plant.

(6) "Creamery" means a place where butter is made for commercial purposes.

(7) "Cheese factory" means a place where cheese including cream cheese, cottage cheese, creamed cottage cheese, cheese curd, cottage cheese dressing, and low-fat counterparts of cheese, either cultured or directly acidified, is made for commercial purposes.

(8) "Frozen dessert plant" means a place where products named in subsections (2)(c) through (2)(i) of this section are made for commercial purposes.

(9) "Cream station" means a place other than a creamery where deliveries of milk or cream are weighed, graded, sampled, tested, or collected for purchase.

(10) "Dairy" or "dairy farm" means a place where one or more cows or goats are kept, a part or all of the milk or cream from which is used for manufacturing purposes.

(11) "Milk" means the lacteal secretion, practically free from colostrum, obtained by the milking of one or more healthy cows located in modified accredited areas and modified certified areas or from cows in herds fully accredited as tuberculosis free by the United States department of agriculture or in the process of being accredited when the milk or cream is sold for use in, intended for use in, or used in a manufactured dairy product.

(12) "Cream" means the milk fat which rises to the surface when milk is allowed to stand or which is separated from milk by centrifugal force when sold, used, or intended for use in a manufactured product.

(13) "Raw milk" or "raw milk products" means milk or milk products which have not been treated by a process of pasteurization.

(14) "Person" means an individual, firm, partnership, corporation, cooperative, or other business unit or trade device.

(15) "Pasteurization", "pasteurizing", and similar terms mean the process of heating every particle of milk or milk product to at least 145 degrees F. and holding it continuously at or above this temperature for at least 30 minutes, or to at least 161 degrees F. and holding it continuously at or above this temperature for at least 15 seconds in equipment which is properly operated and approved by the department. Milk products that have a higher fat content than milk or contain added sweeteners shall be heated to at least 155 degrees F. and held continuously at or above this temperature for at least 30 minutes, or to at least 175 degrees F. and held continuously at or above this temperature for at least 25 seconds. This definition does not bar any other pasteurization process which has been recognized by the United States public health service to be equally effective and which is approved by the department.

(16) "Agent" means a person who is authorized by another person to act for him in dealing with a third person.

(17) "Grading" means the examination of milk, cream, or products by sight, odor, taste, or laboratory analysis, the results of which determine a grade designating their quality.

(18) "Testing", "test", "tested", and similar words mean the examination of milk, cream, or manufactured dairy products by sight, odor, taste, or biological or chemical laboratory analysis to determine their quality, wholesomeness, or composition.

(19) "Safe temperature" means 45 degrees F. or less, unless the product is frozen, in which case the temperature must be at or below 0 degrees F.

(20) "Producer" means the person who exercises control over the production of milk or cream delivered to a milk or cream receiving station or manufactured dairy products plant or who receives payment for milk or cream used in manufacturing.

(21) "Mix" includes the liquid, unfrozen product from which those frozen products listed under subsection (2)(c) through (2)(e) and (2)(g) through (2)(l) are made.

(22) For purposes of reporting production and licensing, "manufactured dairy product" includes but is not limited to:

- (a) Ice cream or its mix;
- (b) French ice cream, custard ice cream, French custard ice cream, their low-fat counterparts, or their mixes;
- (c) Sherbets of all kinds or their mixes;
- (d) Animal or vegetable fat frozen desserts or their mixes;
- (e) Frozen confections or their mixes when made in a manufactured dairy products plant;
- (f) Water ices or their mixes;
- (g) Frozen dessert sandwiches, bars, cones, and similar novelties;
- (h) Frozen dessert made of nondairy origins and other products made in the semblance or imitation of dairy products or their mixes when made in a manufactured dairy products plant;
- (i) Ice milk or its mix;
- (j) Cheese of all kinds including cottage cheese, cheese curd, cheese dressing, and cream cheese either cultured or directly acidified;
- (k) Sour cream when cultured or directly acidified;
- (l) Eggnog, low-fat eggnog, eggnog-flavored milk, and similar flavored products;
- (m) Buttermilk, cultured or from churned butter or directly acidified;
- (n) Butter;
- (o) Yogurt—low-fat yogurt, flavored yogurt, either cultured or directly acidified or frozen.

(23) "Official test" means test procedures outlined in the sources referred to under 3-2498 concerning samples, methods, and rules of evidence.

(24) "Water ice" means a frozen product containing but not limited to the following ingredients: water, sugar, flavoring, coloring, stabilizers, and other ingredients allowed by the Code of Federal Regulations as optional ingredients.

(25) "C.I.P." means the procedure by which sanitary pipelines or pieces of dairy equipment are mechanically cleaned in place by circulation when this procedure meets the 3-A accepted practices for permanently installed sanitary product-pipelines and cleaning systems.

(26) "Filled dairy products" means milk, cream, skimmed milk, or any combination of these, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, or any food product made or manufactured from them, to which has been added or which has been blended or compounded with fat or oil other than milk fat so that the resulting product is in imitation or semblance of a dairy product, including milk, cream, sour cream, skimmed milk, ice cream, low-fat ice cream, whipped cream, flavored milk or skim milk yogurt, dried or powdered milk, cheese, cream, cream cheese, cottage cheese, creamed cottage cheese, ice cream mix, low-fat ice cream mix, sherbet, condensed milk, evaporated milk, or concentrated milk.

(27) "Intrastate commerce" means commerce within this state under



the jurisdiction of the state and includes the operation of a business or service establishment.

(28) "Code of Federal Regulations" refers especially but is not limited to Title 21 which contains the definitions and standards of identity for products as established by the food and drug administration, United States department of health, education and welfare.

(29) "Culture" means the harmless lactic acid fermenting bacteria which are added to milk or cream to make manufactured dairy products like cultured buttermilk, cheese, cottage cheese, yogurt, sour cream, cream cheese, butter, and other similar products.

(30) "Direct acidification", "directly acidified", and similar terms mean the process of adding a food grade acid to milk or cream instead of or in addition to the adding of culture.

(31) "Mislabelled", "unwholesome", "food additives", "optional ingredients", "impure", "misbranded", "contaminated", "adulterated", "perishable", "hazardous", "unfit", "spoiled", "damaged", and similar terms, when applied to a manufactured dairy product or product made in semblance or in imitation of a manufactured dairy product, are as defined in 27-701 through 27-723.

History: En. Sec. 10, Ch. 413, L. 1971; amd. Sec. 17, Ch. 310, L. 1974; amd. Sec. 4, Ch. 12, L. 1977.

#### Amendments

The 1974 amendment substituted "Unless the context requires otherwise in this act" for "Unless the context otherwise indicates, the following terms shall be construed, respectively to mean" at the beginning of the section; deleted definitions of the words "act," "commissioner," and "department" and of the term "and/or" contained in former subsections (1), (2), (4) and (22); changed the subsection designations to account for the deletions; sub-

stituted "department of livestock, provided for in Title 82A, chapter 13" for "department of agriculture of the state of Montana or its authorized representative" in the definition of "Department" in subsection (1); and made minor changes in phraseology, punctuation and style throughout the section.

The 1977 amendment inserted "the following definitions apply" in the introductory clause; substituted "subsection (2)" in subdivision (4) for "subsection (3)"; substituted "(2)(1)" in subdivision (21) for "(2)(e)"; and made minor changes in phraseology, punctuation and style.

**3-2498. Tests and analyses—admissibility as evidence.** (1) The department may require a chemist, biologist, microbiologist, serologist, or other qualified employee of the department of health and environmental sciences or other laboratory approved by the department to test or analyze samples of milk, cream, manufactured dairy products, or products made in the semblance or imitation of these products.

(2) Any appropriate test method listed in Standard Methods for the Examination of Dairy Products, current edition—American Public Health Association, Inc. or Standard Methods for the Examination of Water and Waste Water, current edition—American Public Health Association, Inc. or the methods in the Official Methods of Analysis of the Association of Official Analytical Chemists, current edition as published by the Association of Official Analytical Chemists, or any other appropriate tests approved by the department may be used, and the results of these tests or analyses are admissible as prima facie evidence of the facts disclosed, in a court, hearing, or proceeding arising under this act, when identified by the sample num-

bers and verified by the department representative and analyst handling them. These tests shall be designated and referred to as "official tests".

**History:** En. Sec. 11, Ch. 413, L. 1971; amd. Sec. 18, Ch. 310, L. 1974; amd. Sec. 5, Ch. 12, L. 1977.

#### Amendments

The 1974 amendment inserted the numerical subsection designations; substituted "department of health and environmental sciences" for "state department of health"; in subsection (1); substituted "the department" for "the commissioner" after "approved by" in subsection (1); substituted "current edition" for references to specific editions of the publications named in subsection (2); and made minor

changes in phraseology and punctuation.

The 1977 amendment deleted "1740 Broadway, New York, N.Y. 10019" after "American Public Health Association, Inc." the first time it appears in subsection (2); deleted "1790 Broadway, New York, N.Y. 10019" after "American Public Health Association, Inc." the second time it appears in subsection (2); deleted "Box 540, Benjamin Franklin Station, Washington 4, D.C." after "Association of Official Analytical Chemists" in subsection (2); inserted "may be used" after "department" in subsection (2); and made minor changes in punctuation and phraseology.

**3-2499. Taking and preservation of samples.** A person purchasing or sampling milk or cream for manufacture, sale, or shipment, and paying for the milk or cream on the basis of the butterfat, protein, solids, or other compound components contained in the milk or cream as determined by official test, when receiving the milk or cream shall take a sample of the milk or cream. All samples taken shall be plainly marked or labeled on the records of the purchaser or sampler to correspond with the name of the person from whom the purchase was made or sample obtained. The record of purchase shall also show the weight of the milk or cream, the results of the analysis, the date of sampling, and the amount paid. All milk and cream samples on which payment for butterfat, protein, solids, or other components is based shall be kept and suitably preserved by the purchaser for a minimum of fourteen (14) days following testing in the case of milk and for at least two (2) days in the case of cream. These samples are subject to retest by the department. This section does not prohibit the weighing or measuring of milk in and sampling of milk from farm bulk milk tanks, or the use of composite or single samples of milk according to rules adopted by the department, or the test procedures prescribed in this act.

**History:** En. Sec. 12, Ch. 413, L. 1971; amd. Sec. 19, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "rules

adopted by the department" for "rules and regulations adopted by the commissioner" in the last sentence and made minor changes in phraseology and punctuation.

**3-24-100. License required for milk or cream route.** It is unlawful for a person to engage in hauling milk or cream on an established milk or cream route, for a dairy products manufacturing plant, milk plant, or milk or cream buying or receiving station, without first procuring a license from the department. The fee for the license is five dollars (\$5) annually.

**History:** En. Sec. 13, Ch. 413, L. 1971; amd. Sec. 20, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "de-

partment" for "state department of agriculture" at the end of the first sentence and made minor changes in phraseology.

**3-24-101. License—privilege not a right—expiration—renewal—non-transferability.** All licenses issued under this act are issued as a matter of privilege, rather than as a matter of right, and only after proper qualifications under the rules of the board. All licenses issued under this act are valid, unless sooner suspended or revoked for cause, from the date of issue through December 31 of the year in which issued. All licenses shall be renewed by the first January 31 following the date of license expiration on payment of the required fee. All licenses issued under this act shall be posted in conspicuous view at the place of business. Licenses issued under this act are not transferable from place to place nor person to person. Penalties of five dollars (\$5) per month or fraction of a month from January 31 of each year may be imposed by the department for a failure to apply for a license under this act. Regulatory action may not be taken against a dairyman licensed under this act, until two (2) years following the adoption of rules under this act.

**History:** En. Sec. 14, Ch. 413, L. 1971; amd. Sec. 21, Ch. 310, L. 1974.

**Amendments**

The 1974 amendment substituted "department" for "commissioner" in the next

to last sentence and substituted "rules under this act" for "regulations as authorized under this act" at the end of the section; and made minor changes in phraseology.

**3-24-102. Examination and licensing of persons engaged in testing.**

(1) A person may not operate a butterfat, protein, solids, or other component content test where milk or cream is bought and paid for on the basis of these values, without first passing an appropriate examination and obtaining the license required by the department. A person desiring to operate these tests shall apply to the department for permission to take the butterfat, protein, solids, or other component content test operator's examination. The examination shall be given to the applicant by the department. On passing the examination to the satisfaction of the department, the applicant shall be issued a license authorizing him to conduct these tests in this state. A fee of ten dollars (\$10) shall be paid for each license and for each renewal.

(2) Milk and cream tester's licenses may be revoked, suspended, or denied where testing is not conducted under official test procedures, or under department rules. If the tester regularly or habitually reports results below the actual values of the butterfat, protein, solids, or other compound component values, the licensee is subject to the penalties provided in this act. A person who alters the results of an official test is subject to the penalties provided in this act.

**History:** En. Sec. 15, Ch. 413, L. 1971; amd. Sec. 22, Ch. 310, L. 1974.

**Amendments**

The 1974 amendment inserted the numerical subsection designations; substituted "department" for "state department of agriculture" in the second sentence of

subsection (1); substituted "department" for "chief of the dairy and egg division of the department or his agent" in the third sentence of subsection (1); substituted "department" for "commissioner" in the fourth sentence of subsection (1); and made minor changes in phraseology and punctuation.

**3-24-103. Sampling and testing by department.** The department shall have the authority to sample, test, and/or retest samples of milk or cream



or their products, at any dairy, at the premises of any supplier of milk or cream for manufacturing purposes, or at any manufactured dairy products plant, milk plant, or cream buying or receiving station.

History: En. Sec. 16, Ch. 413, L. 1971.

**3-24-104. Grading of milk—condemnation of unsafe milk.** Milk or cream purchased for use in milk plants or for use in a manufactured dairy product in this state shall be graded by licensed graders, weighers, and samplers. If the milk or cream is found to be musty, adulterated, rancid, dirty, with marked undesirable odors or flavors, or to contain foreign objects, fragments, substances, or excessive bacteria, it is unlawful to sell, purchase, or use the milk or cream for a food purpose. The milk or cream grader or the department shall condemn the milk or cream, and may add to the milk or cream a nontoxic coloring substance or rennet and return it to or leave it with the producer with an explanation of the cause for rejection.

History: En. Sec. 17, Ch. 413, L. 1971;  
amd. Sec. 23, Ch. 310, L. 1974.

partment" for "commissioner" in the last sentence and made minor changes in phraseology and punctuation.

#### Amendments

The 1974 amendment substituted "de-

**3-24-105. Employment of grader, weigher, and sampler—license required—revocation of operator's license.** (1) Persons receiving or purchasing milk or cream and persons collecting milk or cream on milk or cream routes shall provide a licensed grader, weigher, and sampler, at each receiving station or for each route.

(2) It is unlawful for a person to grade, weigh, or sample milk or cream to be used for processing into grade A milk and cream or used in manufactured dairy products without first procuring a license as a grader, weigher, and sampler from the department and passing the examination required by the department.

(3) A person who knowingly employs an unlicensed person as a grader, weigher, and sampler, or one whose license has been revoked or suspended, is subject to revocation of his own license to operate a manufactured dairy products plant, or cream or milk receiving station or to the penalties prescribed in this act.

History: En. Sec. 18, Ch. 413, L. 1971;  
amd. Sec. 24, Ch. 310, L. 1974.

merical subsection designations; substituted "department" for "commissioner" at the end of subsection (2); and made minor changes in phraseology.

#### Amendments

The 1974 amendment inserted the nu-

**3-24-106. Renewal, suspension or revocation of license—grounds—hearing—appeal to district court.** (1) The department may deny renewal of, suspend, or revoke, a license issued under this act or its rules, for cause or failure to comply with this act or with the rules, testing procedures, or methods adopted under this act, or when the department has reason to believe that the licensee's products may be detrimental to or jeopardize the health and welfare of the public.

(2) Before revoking, denying renewal of, or suspending a license, the department shall give written notice of its intention to revoke, deny, or

suspend the license, and its reasons therefor. The department shall give the licensee a time limit of ten (10) days from receipt of the notice during which the licensee may request a hearing to show cause why his license should not be revoked, denied, or suspended. The notice shall be sent by certified mail, or personal service may be made on the licensee by a representative of the department. Failure of the licensee to request a hearing within the time allowed by the department is considered as his desire not to contest the department's reasons for suspending, denying, or revoking the license.

(3) If the licensee does request a hearing, the department shall appoint a time and place for an administrative hearing in the county where the licensee is licensed.

(4) The date established for the hearing must be not less than ten (10) days nor more than thirty (30) days after receipt of the licensee's request for the hearing. A request for a hearing shall serve as a bar to prosecution until a decision from the department becomes final. The licensee at the hearing may testify or present evidence having a bearing on the denial, suspension, or revocation of his license, and, after hearing all the evidence, the department shall make a determination. If a license is suspended, denied, or revoked it may not be reinstated until examination or inspection by the department shows that the cause for suspension, denial, or revocation has been eliminated or corrected.

(5) It is unlawful for a licensee to carry on the business or operations for which he was licensed, during the term of suspension or revocation, and if he does so, the licensee is subject to the penalties provided in the act.

(6) A licensee who is aggrieved by the decision of the department in matters pertaining to suspension, denial, or revocation of a license may appeal, within thirty (30) days after the date of determination by the department to the district court of the county in which he was licensed, if in the state, or in the case of a business firm of any nature in the state to the county of its principal place of business.

(7) If a license is revoked, a new license must be obtained from the department but a new license may be issued only when the cause for revocation has been corrected.

History: En. Sec. 19, Ch. 413, L. 1971; amd. Sec. 25, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment inserted the numerical subsection designations; substi-

tuted "department" for "commissioner" in subsections (1) to (4) and (6); substituted "rules" for "regulations" in subsection (1) and made minor changes in phraseology and punctuation.

**3-24-107. License required to operate manufactured dairy products plant.** It shall be unlawful for any person to operate a manufactured dairy products plant, concentrated, condensed or evaporated milk and/or cream plant, milk and cream buying station, creamery, dairy producing milk for manufacturing purposes, water ice manufacturing plant, cheese plant including cottage cheese, and cream cheese, sour cream, yogurt or frozen dessert manufacturing plant without first obtaining a license from the department.

Any manufactured dairy products plant or dairy which undergoes a change of ownership shall be considered a new plant or dairy for re-licensing purposes; provided, that changes of ownership shall not be construed to include changes of stockholders.

History: En. Sec. 20, Ch. 413, L. 1971.

**3-24-108. Names and addresses of producers furnished on request.** The operator of any manufactured dairy products plant or grade A milk plant shall, on request of the department, furnish the department with the names and addresses of all producers from whom the plant obtains milk or cream.

History: En. Sec. 21, Ch. 413, L. 1971;  
amd. Sec. 26, Ch. 310, L. 1974.

request of the department" for "upon request of the commissioner" and made a minor change in phraseology.

**Amendments**

The 1974 amendment substituted "on

**3-24-109. Use of inspections, tests, samples, etc. as evidence.** All copies of inspections, written transcriptions, tests, samples of dairy products, analyses, correspondence, records of payment, trip and field reports, and photographic presentations relating to matters under this act may be used as evidence in any court of jurisdiction, at hearings or as testimony of the facts disclosed.

History: En. Sec. 22, Ch. 413, L. 1971.

**3-24-110. Plans for construction, remodeling or relocating of manufacturing plant.** Before the construction, extensive remodeling, or relocation of a dairy products manufacturing plant, detailed plans shall be submitted to the department for review and approval before construction, remodeling or relocation begins. The plans must show: size of rooms, type of building material, lighting and electrical system, ventilation, location of water supply, sewage disposal, materials to be used in floors, walls, and ceilings, location and type of floor drains, plumbing, plumbing fixtures, equipment, and the makes, models, and serial numbers of new or used equipment or machinery being added to or replacing existing equipment or machinery. Replacement equipment shall be of the NSF or 3A standard approved types, unless otherwise approved by the department. Construction and materials must conform to rules of the department and of building, electrical, and plumbing codes in effect in the area. Waste water, sewage, and air pollutants shall be disposed by means approved by the department of health and environmental sciences, and evidence shall be submitted that approval has been obtained from the department of health and environmental sciences.

History: En. Sec. 23, Ch. 413, L. 1971;  
amd. Sec. 27, Ch. 310, L. 1974.

**Amendments**

The 1974 amendment substituted "department" for "commissioner" in the first sentence; substituted "rules" for "regula-

tions" in the next to last sentence; substituted "department of health and environmental sciences" for "Montana state department of health" and "state department of health" in the last sentence; and made minor changes in phraseology.

**3-24-111. Monthly report of plant operator—penalty.** A person operating a manufactured dairy products plant in this state shall send to the



department once a month, not later than the tenth day of the month, a full report of the amounts of butter, cheese, frozen dessert, ice cream, low-fat ice cream, sherbet, water ices, ice milk, freezer-made milk shakes, or other dairy products handled or manufactured during the preceding month, as requested by the department. Any person failing to render the report required by this section or failing to make the report by the date due is guilty of a misdemeanor and subject to the penalties provided in this act.

History: En. Sec. 24, Ch. 413, L. 1971;      partment" for "commissioner" at the end  
amd. Sec. 28, Ch. 310, L. 1974.      of the first sentence and made minor  
changes in phraseology.

**Amendments**

The 1974 amendment substituted "de-

**3-24-112. Repealed.**

**Repeal**

Section 3-24-112 (Sec. 25, Ch. 413, L. 1971), relating to fees required under the      Manufactured Dairy Products Act, was  
repealed by Sec. 2, Ch. 451, Laws 1973.  
For new law see sec. 3-24-112.1.

**3-24-112.1. Licenses and schedule of license fees.** Licenses and license fees required under this act are as follows:

(1) Manufactured dairy products plant .....\$50

However, a plant license is not required of a food service establishment licensed by the Montana department of health and environmental sciences as defined in section 27-612; and no license is required to manufacture non-dairy products when only such products are manufactured.

(2) Cream station .....\$5

However, a license is not required if the cream station is owned and operated by a licensed plant; but the milk and cream, equipment, premise and means of transporting milk or cream is subject to official inspection.

(3) Dairy producing milk for manufacturing purposes .....\$5

However, a dairy license is not required if the dairy farm is licensed by the department to produce and sell milk or cream in the form in which it is originally produced as required by section 46-232.

(4) Grader-weighter-sampler .....\$ 5

(5) Tester .....\$10

(6) Hauler .....\$ 5

However, a separate grader-weighter-sampler, tester and hauler license is required whether a person performing these activities owns and operates the plant, is employed by the plant or is self-employed.

A license is valid on the date issued through December 31 of that year unless suspended or revoked by the department. A license must be renewed by the first January 31 following the expiration date of December 31. A license renewal application form may be supplied by the department. When the license renewal application form is returned to the department, it shall be accompanied by the correct license fee. A license shall be posted in conspicuous view at the place of business. A license is not transferable from place to place nor from person to person. A penalty of five dollars (\$5) per month, or fraction of a month, after January 31 may be imposed by the department on a person who fails to apply for renewal of his license if under the act that person is required to be licensed.

All license fees collected shall be deposited in the general fund.

**History:** En. Sec. 1, Ch. 451, L. 1973.

products act"; repealing section 3-24-112, R. C. M. 1947.

#### Title of Act

An act to provide for the establishment of requirements on milk for manufacturing purposes and its production and processing, known as the "manufactured dairy

#### Repealing Clause

Section 2 of ch. 451, Laws 1973 read "Section 3-24-112, R. C. M. 1947, is repealed."

**3-24-113. Removal or destruction of products in case of potential health hazards.** (1) When epidemiological evidence indicates, or the likelihood exists that a dairy or manufactured dairy products plant is producing, manufacturing, storing, handling, or offering for sale, milk or a manufactured dairy product which is adulterated, or which may be detrimental to the health or safety of the consumer, the department may request the department of health and environmental sciences to remove the product from the market or to hold, dispose of, destroy, or treat the product so that it no longer constitutes a potential health hazard.

(2) It is unlawful for a person to violate an order which requires the product's removal from the market, or its retention, disposal, destruction, or treatment. Violation is punishable as a misdemeanor, and each violation is subject to a fine of not less than twenty-five dollars (\$25) nor more than two hundred fifty dollars (\$250) or by imprisonment in the county jail for not more than thirty (30) days, or both fine and imprisonment.

**History:** En. Sec. 26, Ch. 413, L. 1971; amd. Sec. 29, Ch. 310, L. 1974.

tuted "department" for "commissioner" in subsection (1); substituted "department of health and environmental sciences" for "state department of health" in subsection (1); and made minor changes in phraseology and punctuation.

#### Amendments

The 1974 amendment inserted the numerical subsection designations; substi-

**3-24-114. Department's right of entry into dairy or plants for inspection—penalty.** (1) The department or its authorized agent has the right of entry during normal business hours, including Sundays and holidays, in a dairy supplying milk or cream for manufacturing purposes, manufactured dairy products plant, milk plant, cream receiving station, transportation facility, or any premises where dairy products, dairy manufactured products, or their substitutes or imitations are produced, manufactured, sold, offered for sale, or stored while in transit; to inspect the dairy or plant, its facilities and products, or to obtain samples for testing or analysis. It is unlawful for a person to interfere with the department or its authorized agent in the performance of its duty to enter, inspect, or obtain samples.

(2) Violation of this section is a misdemeanor and subjects the offender to a fine of not less than fifty dollars (\$50) and not more than five hundred dollars (\$500) or to imprisonment in the county jail for not less than one (1) nor more than thirty (30) days, or both such fine and imprisonment.

**History:** En. Sec. 27, Ch. 413, L. 1971; amd. Sec. 30, Ch. 310, L. 1974.

tuted "Department's" for "Commissioner's" in the caption; substituted "department" for "commissioner" in two places in subsection (1); and made minor changes in phraseology and punctuation.

#### Amendments

The 1974 amendment inserted the numerical subsection designations; substi-

**3-24-115. Co-operative agreements with other agencies.** (1) The department may enter into co-operative working agreements with state, county, city, and town departments and their political or departmental subdivisions to facilitate the performance of its functions or duties.

(2) This section permits the department to establish co-operative working agreements with health departments, sanitarians, or health officers, when special investigations, sampling, or analyses are considered advisable.

**History:** En. Sec. 28, Ch. 413, L. 1971; merical subsection designations; substituted "department" for "commissioner" in  
amd. Sec. 31, Ch. 310, L. 1974. subsections (1) and (2); and made minor

**Amendments** The 1974 amendment inserted the nu-

changes in phraseology and punctuation.

**3-24-116. Buyers and plants to make records available to department.**

(1) Persons, including co-operatives, who buy or sell milk or cream on the basis of butterfat, protein, solids, or other component content of milk or cream, shall make available to the department on its request, records showing the amounts of milk or cream sold or purchased, the price per pound, the amount paid, the sampling period for which the amount was paid, and the name and address of the person to whom payment was made or from whom payment was received.

(2) A manufactured dairy product plant on request by the department, shall make available production records of dairy manufactured products covered by this act and manufactured products made in semblance or imitation of these dairy products.

**History:** En. Sec. 29, Ch. 413, L. 1971; merical subsection designations; substituted "department" for "commissioner" in  
amd. Sec. 32, Ch. 310, L. 1974. subsections (1) and (2); and made minor

**Amendments** The 1974 amendment inserted the nu-

changes in phraseology and punctuation.

**3-24-117. Labeling of cheese containers—products to be kept at safe temperature.** It shall be unlawful, and punishable as a misdemeanor, for any person to offer for sale, expose for sale, or sell any cheese in any container or wrapper unless such container or wrapper bears a legible label or inscription indicating the net weight, type or style of cheese, and the manufacturer's or distributor's name and address or plant number.

All manufactured dairy products which are handled, displayed, transported, exposed for sale, offered for sale, or sold in Montana, shall be considered perishable and potentially hazardous, and shall be kept at safe temperature or below; provided, however that nothing in this requirement shall be construed as prohibiting higher temperatures which are necessary for curing, ripening or aging of certain cheeses and cultured products, and provided, further, that this section of the act does not apply to manufactured dairy products packaged in hermetically sealed containers or sterile manufactured dairy products which do not require refrigeration for their safekeeping.

**History:** En. Sec. 30, Ch. 413, L. 1971.



**3-24-118. Sanitary regulation of imported products.** All manufactured dairy products, or imitations or products made in semblance thereof, covered by this act, shipped into Montana for sale display or use must be produced under the same or equivalent sanitary regulations and requirements as govern the production of such products in Montana.

Unless the sanitary conditions of manufacture and standards of identity conform to the same or equivalent standards required by the laws or regulations of this state, such products shall not be sold, given away, displayed, transported into, or used in Montana.

History: En. Sec. 31, Ch. 413, L. 1971.

**3-24-119. Manufacturer's, wholesaler's or retailer's names to appear on package—use of codes and numbers permitted.** All manufactured dairy products sold, offered, displayed, or exposed for sale, at wholesale or retail in this state, wherever manufactured, must be packaged in a protective wrapper or package and must have the manufacturer's and wholesaler's or retailer's names clearly printed in a conspicuous place on the package or wrapper in which it is sold. If a manufactured dairy product is packaged in a plant other than that of the plant whose name appears on the package or wrapper, the package or wrapper shall also show the name of the plant at which the product was packaged or wrapped. However, this section does not prevent the use of codes or numbers which designate the packaged or wrapping plant, when these codes or numbers are registered with the department.

History: En. Sec. 32, Ch. 413, L. 1971;  
amd. Sec. 33, Ch. 310, L. 1974.

**Amendments**

The 1974 amendment substituted "regis-

tered with the department" for "registered in the office of the dairy and egg division of the department" at the end of the section and made minor changes in phraseology and punctuation.

**3-24-120. Sale or use of impure, colored, adulterated or unwholesome milk unlawful.** It shall be unlawful for any person to sell, manufacture or exchange, display or offer or expose for sale or exchange, as milk or cream, any impure, colored, adulterated, or unwholesome milk or cream or any substance in the semblance or imitation of milk or cream, nor shall any such impure, colored, adulterated, or unwholesome milk or cream be used in the manufacture of any article of food for human beings.

History: En. Sec. 33, Ch. 413, L. 1971.

**3-24-121. Manufacture, sale, or importation of products containing extraneous fats.** It shall be unlawful for any person to manufacture, mix, compound with, or add to milk, cream, or any manufactured dairy products, or to transport into Montana any manufactured dairy product containing foreign animal fats or foreign animal or vegetable oils or products containing nonapproved ingredients with the intent to sell the same as milk, cream or manufactured dairy products except as allowed under the law and/or regulations of Montana, nor shall any person possess, solicit orders for display, or sell any such article, substance, or compound as or for milk, cream or manufactured dairy products.

History: En. Sec. 34, Ch. 413, L. 1971.

**3-24-122. Filled dairy products unlawful—exceptions.** (1) Filled dairy products resemble genuine dairy products so closely that they lend themselves readily to substitution for and confusion with such dairy products and in many cases cannot be distinguished from genuine dairy products by the ordinary consumer or ordinary laboratory procedures. The manufacture, sale, exchange, purveying, transportation, possession, or offering for sale or exchange or purveyance of filled dairy products lends itself to substitution, confusion, deception, and fraud and if permitted, tends to interfere with the orderly and fair marketing of foods essential to the well-being of the people of this state. It is hereby declared to be the purpose of this act to:

- (a) correct, prevent, and eliminate the condition above referred to;
  - (b) protect the public from confusion, fraud, and deception;
  - (c) prohibit practices inimical to the general welfare; and
  - (d) promote the orderly and fair marketing of essential foods.
- (2) It is unlawful:

(a) for any person to manufacture, sell, exchange, display, purvey, transport, or possess any filled dairy product or to offer or expose for sale or exchange or to be purveyed any such product in intrastate commerce;

(b) for any person owning or operating a bakery, confectionery shop, factory, or other place where food products are prepared or manufactured for sale, exchange, or purveyance to the public in intrastate commerce to utilize any filled dairy product as an ingredient in any food product so manufactured or prepared;

(c) for any person knowingly to sell, exchange, purvey, transport, or possess any food product in intrastate commerce in which any filled dairy product is an ingredient.

(3) The term "filled dairy product" does not mean or include:

- (a) oleomargarine;
- (b) any distinctive proprietary food compound not readily mistaken for a dairy product where such compound is customarily used on the order of a physician and is prepared and designed for medicinal or special dietary use and prominently so labeled;
- (c) any frozen dessert containing animal fat (other than butterfat) or vegetable fat when the container is properly labeled;
- (d) any dairy product flavored with chocolate or cocoa where the fats or oils other than milk fat contained in such product do not exceed the amount of cacao fat naturally present in the chocolate or cocoa used; or
- (e) any dairy product in which the vitamin content has been increased and food oil utilized as a carrier of such vitamins provided the quantity of such food oil does not exceed 1/100 of 1% of the weight of the finished dairy product.

**History:** En. Sec. 35, Ch. 413, L. 1971; amd. Sec. 6, Ch. 12, L. 1977.

#### **Amendments**

The 1977 amendment designated the first paragraph as subsection (1); com-

bined former subdivisions (1), (2) and the first part of (3) into subsection (2); designated the proviso of former subdivision (3) as subsection (3); and made minor changes in style, punctuation and phraseology.

**3-24-123. Manufactured products to conform to standards of identity.**

It shall be unlawful for any person to manufacture, display, transport, sell or offer for sale in Montana as a manufactured dairy product any substance or product which does not conform to the standards of identity for such product as defined in the Code of Federal Regulations, or to the standard of identity established by the department.

History: En. Sec. 36, Ch. 413, L. 1971.

**3-24-124. Adulterating milk or cream unlawful.** It shall be unlawful for any person to adulterate milk or cream produced or sold for manufacturing purposes, or for any manufactured dairy product to contain an adulterant. For purposes of this act, the presence of any antimicrobial substance, pesticide residuals, unapproved coloring, food additives, or foreign substances added directly to or assimilated into such products which are not explicitly allowed in the Code of Federal Regulations except for the addition of adulterants for rejection purposes, shall be deemed adulterated. Violations of this section shall be misdemeanors, and shall be punishable by fine or imprisonment, or both, as provided in the act.

History: En. Sec. 37, Ch. 413, L. 1971.

**3-24-125. Repealed.****Repeal**

Section 3-24-125 (Sec. 38, Ch. 413, L. 1971), regulating advertising of oleo-

margarine, was repealed by Sec. 1, Ch. 286, Laws 1973.

**3-24-126. Pasteurization required.** All milk and cream used in the manufacture of any dairy product, or products made in semblance of imitations of dairy products, sold, offered for sale, purveyed, stored, displayed or transported in Montana, shall be pasteurized; provided, however, that cheese held, stored, or aged, for at least sixty (60) days at not less than 35 degrees F., shall not be required to be made from pasteurized milk or cream, but shall be required to be labeled "made from raw" or "unpasteurized milk" or "unpasteurized cream," as the case may be. Other cultured raw or unpasteurized dairy products which can be made safe by aging shall also be required to be similarly aged and labeled as required above.

History: En. Sec. 39, Ch. 413, L. 1971.

**3-24-127. Pasteurization apparatus and records.** (1) The department may adopt rules which it considers necessary to assure proper control and use of all equipment used in the process of pasteurization. The department may require the operation of devices and apparatus which are needed to accurately record and indicate temperatures to which and the length of time for which the pasteurized product has been heated, including those periods and temperatures when the equipment is cleaned and sanitized by C.I.P. method. A person using pasteurizing equipment in this state shall properly record and have available to the department for the preceding 2 months all records pertaining to the pasteurization of any product. These



records shall at all times be open to the inspection of the department, the department of health and environmental sciences, and all other state, county, and municipal officers charged with the enforcement of laws and ordinances respecting dairy products or the public health.

(2) Pasteurizing equipment which records temperatures or controls the time of holding shall be timed, set, and sealed by the department. The seals may not be removed or broken without first notifying the department.

**History:** En. Sec. 40, Ch. 413, L. 1971; amd. Sec. 34, Ch. 310, L. 1974; amd. Sec. 7, Ch. 12, L. 1977.

#### Amendments

The 1974 amendment inserted the numerical subsection designations; substituted "department" for "commissioner" in two places in subsection (1); substituted "department of health and environmental sciences" for "state department of health" in the last sentence of subsection (1); sub-

stituted "department" for "commissioner" at the end of the first sentence of subsection (2); substituted "department" for "dairy and egg division" at the end of the last sentence of subsection (2); and made minor changes in phraseology and punctuation.

The 1977 amendment inserted "apparatus" in the second sentence of subsection (1); and made minor changes in punctuation and style.

**3-24-128. Pasteurization labeling.** It is unlawful for a person to sell, offer for sale, exchange, or to have in his possession for these purposes milk, cream, or a manufactured dairy product, in a container or package marked, labeled, or in any way designating the contents of the container or package as "pasteurized," unless it has been treated by an approved process of pasteurization, as required by the department.

**History:** En. Sec. 41, Ch. 413, L. 1971; amd. Sec. 35, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "de-

partment" for "commissioner" at the end of the section and made minor changes in phraseology and punctuation.

**3-24-129. License requirements applicable.** The licenses required under this act apply only to those licenses issued by the department. This act does not repeal or abrogate the authority of or the issuance of licenses by the department of health and environmental sciences.

**History:** En. Sec. 42, Ch. 413, L. 1971; amd. Sec. 36, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment deleted references

to licenses issued by the state livestock sanitary board; substituted "department of health and environmental sciences" for "state department of health"; and made minor changes in phraseology.

**3-24-130. Antimonopoly statutes applicable.** The provisions of state statute sections [51-403 to 51-410] inclusive, relating to monopoly in the purchase or sale of products in general use, are hereby expressly made applicable to all persons engaged in the business of buying milk, cream, or butterfat for the purpose of manufacture, and those who shall violate any of the provisions of said sections. All milk, cream, butterfat, manufactured dairy products, or products made in the semblance or imitation of manufactured dairy products, are hereby declared to be commodities and products in general use within the meaning of the sections aforesaid.

**History:** En. Sec. 43, Ch. 413, L. 1971.

#### Compiler's Notes

The bracketed reference to sections 51-

403 to 51-410 was inserted by the compiler in place of a reference to sections 94-1107 to 94-1114, to show the transfer made by Section 29, Ch. 513, Laws of 1973.

**3-24-131. Milk and manufactured dairy products to conform to standards.** All milk and cream used in manufactured dairy products, and the manufactured dairy products, shall conform to the standards of purity, quality, and wholesomeness as provided in this act or in the regulations promulgated under the authority of this act.

History: En. Sec. 44, Ch. 413, L. 1971.

**3-24-132. Posting prices of butterfat required.** All persons who buy milk or cream for manufacturing purposes shall post the current prices for butterfat, or other component content, of milk or cream, in a conspicuous place in the factory or place of business. Such price schedule may be based upon butterfat, protein, solids, or other components of milk or cream and shall indicate upon which of such basis payment is made.

History: En. Sec. 45, Ch. 413, L. 1971.

**3-24-133. Repealed.**

**Repeal**

Section 3-24-133 (Sec. 46, Ch. 413, L. 1971), relating to the license required for a butter or cheese wholesaler, was repealed by Sec. 201, Ch. 310, Laws of 1974.

**3-24-134. Requirements for containers and equipment.** All containers and equipment used in the manufacture, storage, holding display and transportation of any manufactured dairy product shall be nontoxic, easily cleanable and free from dents, cracks, crevices, rust and any other condition which would prevent cleaning and sanitizing.

History: En. Sec. 47, Ch. 413, L. 1971.

**3-24-135. Labeling of animal or vegetable fat contents on frozen desserts.** Any frozen dessert made in the semblance of or in imitation of ice cream in this act, which contains any amount of animal fat (other than milk fat), or vegetable fat or oil, (other than any such fat or oil which is naturally present in any flavoring ingredient), shall be labeled as an animal fat product, or vegetable fat product, or a combination of both, as the case may be. Such animal fat or vegetable fat products shall be manufactured from a pasteurized mix, which has been processed in a licensed manufacturing dairy product plant. All persons manufacturing, offering for sale or exchange, or selling such animal fat or vegetable fat frozen desserts shall be subject to the sanitary, reporting, and licensing regulations of this act and of the regulations promulgated under the authority of this act.

No representation shall be made by statement, word, grade designation, design, symbol, device, or in any other manner, on any container, package, or wrapper, or on any advertising media that such animal fat or vegetable fat product, or combination thereof, is ice cream, sherbet or any of their low-fat counterparts or derivatives, or any other products which are prohibited from containing animal or vegetable fats.

The container, package, or wrapper, containing such animal fat or vegetable fat frozen dessert, shall be clearly and plainly marked, labeled, or printed, on the outside, in boldfaced letters, with the words, "Animal



Fat Product," "Vegetable Fat Product," "Animal-Vegetable Fat Products," or "Vegetable-Animal Fat Product" as the case may be, and shall bear thereon the common or usual name of each of the ingredients therein, including the fats or oils; except that spices, flavorings, or colorings may be designated as such without naming each.

History: En. Sec. 48, Ch. 413, L. 1971.

**3-24-136. Labeling on manufactured dairy products to conform to requirements.** Labeling on manufactured dairy products shall conform to requirements of the Food, Drug and Cosmetic Act, and to the other requirements which are adopted by the department or the department of health and environmental sciences.

History: En. Sec. 49, Ch. 413, L. 1971; amd. Sec. 37, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "de-

partment of health and environmental sciences" for "state department of health" at the end of the section and made minor changes in phraseology.

**3-24-137. Penalties for violations.** (1) A person who violates this act, fails to comply with the rules adopted under this act, or fails or neglects to obey a lawful order of the department made under this act, is guilty of a misdemeanor.

(2) Unless a specific penalty is provided in this act or rules for the offense, the offender shall be fined not less than twenty-five dollars (\$25) and not more than five hundred dollars (\$500) or imprisoned in the county jail for not to exceed six (6) months, or both fined and imprisoned.

History: En. Sec. 50, Ch. 413, L. 1971; amd. Sec. 38, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment inserted the numerical subsection designations; substituted "regulations" for "rules" in subsections (1) and (2); deleted two references to "commissioner" in subsection (1); and made minor changes in phraseology and punctuation.

3-2417, 3-2418, 3-2419, 3-2420, 3-2421, 3-2422, 3-2423, 3-2424, 3-2425, 3-2426, 3-2427, 3-2428, 3-2429, 3-2430, 3-2431, 3-2434, 3-2436, 3-2437, 3-2438, 3-2439, 3-2440, 3-2441, 3-2442, 3-2443, 3-2444, 3-2447, 3-2448, 3-2449, 3-2450, 3-2451, 3-2452, 3-2453, 3-2454, 3-2455, 3-2456, 3-2457, 3-2458, 3-2459, 3-2460, 3-2461, 3-2462, 3-2463, 3-2464, 3-2465, 3-2466, 3-2467, 3-2468, 3-2469, 3-2470, 3-2471, 3-2472, 3-2476, 3-2477, 3-2478, 3-2479, 3-2480, 3-2481, 3-2482, 3-2483, 3-2484, 3-2485, 3-2486, 3-2487 are repealed."

#### Repealing Clause

Section 51 of Ch. 413, Laws 1971 read "Sections 3-2401, 3-2402, 3-2403, 3-2405, 3-2406, 3-2407, 3-2408, 3-2409, 3-2410, 3-2411, 3-2412, 3-2413, 3-2414, 3-2415, 3-2416,

#### Effective Date

Section 52 of Ch. 413, Laws 1971 read "This act is effective on January 1, 1972."

**3-24-138. Deceit in grade, measure, or test of milk and cream unlawful.** No person may use a measure or grading or testing apparatus which does not comply with the standards of the department or make any false or inaccurate statement or otherwise deceive or defraud a producer or other person concerning the weight, measure, butterfat content, or other component content of milk or cream.

History: En. Sec. 1, Ch. 182, L. 1931; amd. Sec. 1, Ch. 169, L. 1933; Sec. 3-113, R. C. M. 1947; amd. and redes. 3-24-138 by Sec. 3, Ch. 218, L. 1974; amd. Sec. 8, Ch. 12, L. 1977.

#### Amendments

The 1974 amendment renumbered this section; and made minor changes in style, punctuation and phraseology.



The 1977 amendment rewrote the section which read "A person, firm, or corporation selling or delivering milk or cream, or receiving or purchasing milk or cream by weight, grade or Babcock test, or either, or by measure, grade or Babcock test, or either, may not with intent to deceive or defraud as to the weight, grade, measure or Babcock test thereof, manipulate,

change or alter the measure, Babcock test, grade or weight, or make or return to a person a false or inaccurate statement of the weight, grade, Babcock test or measure, or use a measure or grading or testing apparatus which does not comply with the standards of the department or which has been condemned as inaccurate."

**3-24-139. Penalty for violations—revocation of license.** A person, firm, or corporation who violates section 3-24-138 is guilty of a misdemeanor and shall be fined not more than three hundred dollars (\$300) or imprisoned in the county jail for not more than two (2) months, or both fined and imprisoned. The department may revoke a license issued to a person, firm, or corporation upon conviction for violation of section 3-24-138.

**History:** En. Sec. 2, Ch. 182, L. 1931; amd. Sec. 2, Ch. 169, L. 1933; Sec. 3-114, R. C. M. 1947; amd. and redes. 3-24-139 by Sec. 4, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment renumbered this section; substituted "department" for "commissioner of agriculture"; and made minor changes in punctuation and phraseology.

## CHAPTER 25—MONTANA QUALITY LABEL—USE ON INSPECTED AGRICULTURAL AND FOOD PRODUCTS

### Section

- 3-2501. Montana quality label.
- 3-2502. Limitation on use of label.
- 3-2503. Procurement and use of labels—information concerning—disposal of moneys.
- 3-2504. Wrongful use of label—penalty—injunction—prosecutions.
- 3-2505. Definitions.

**3-2501. Montana quality label.** The department of livestock may make use of an outline map of the state of Montana and the word "Montana," printed, lithographed, inscribed, engraved, or otherwise impressed on the labels, tags, seals, or containers of agricultural or food products, by a person who has availed himself of the continuous official inspection service offered by the department of livestock, as an indication that the product has been inspected by the officers, agents, or licensed inspectors of the department and that the products are of the quality and description as indicated on the label, tag, seal, or container. The outline map with the word "Montana," when made use of under this chapter, shall be known as the "Montana quality label." When an authorized department, agent, or officer of the United States collaborates with the department of livestock in the inspection of a product, the Montana quality label may, with the consent of the appropriate department, agency, or officer of the United States, be superimposed on an outline map of the United States on the label, tag, seal or container, indicating inspectional collaboration between the department of livestock and the department, agency, or officer of the United States.

**History:** En. Sec. 1, Ch. 290, L. 1947; amd. Sec. 39, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted refer-

ences to "department of livestock" for "commissioner of agriculture" and "department of agriculture" in the first sentence; substituted references to "depart-

ment of livestock" for "department of agriculture" and "division" in the last sentence; and made minor changes in phraseology, punctuation and style.

**3-2502. Limitation on use of label.** The Montana quality label may not be used except under the rules made for its use by the department of livestock, and it may not be used on the label, tag, seal, container, or product of a farm, factory, mill, or other producing, processing, packing, preparing, or dressing establishment unless the product is produced, processed, packed, prepared, or dressed under continuous official inspection.

History: En. Sec. 2, Ch. 290, L. 1947; amd. Sec. 40, Ch. 310, L. 1974.

partment of livestock" for "commissioner" and made minor changes in phraseology and punctuation.

#### Amendments

The 1974 amendment substituted "de-

**3-2503. Procurement and use of labels—information concerning—disposal of moneys.** The department of livestock may make, print, or otherwise prepare a quantity of labels, tags, and seals with the Montana quality label printed, lithographed, inscribed, engraved, or impressed on them, sufficient to supply the demand for them. The department of livestock may furnish labels, tags, and seals at reasonable prices to a producer, processor, packer, or dresser who has availed himself of the continuous official inspection service. This chapter, however, does not preclude the department of livestock from permitting, under its rules a producer, processor, packer, or dresser to make, prepare, or cause to be made or prepared, the labels, tags, or seals to be used on his own product, or to print, stamp, or otherwise place or cause to be placed the Montana quality label on products or containers which have been subject to continuous inspection, if the labels, tags, seals, stamps or other devices are of a design which the department prescribes. The department of livestock may, in co-operation with the United States department of agriculture or otherwise, make use of available and appropriate means to disseminate information concerning the Montana quality label and the products which may lawfully bear it, and to popularize its use. All moneys derived from furnishing the labels, tags, and seals, or from permitting the use of the Montana quality label shall be deposited in the state treasury to the credit of the general fund.

History: En. Sec. 3, Ch. 290, L. 1947; amd. Sec. 44, Ch. 147, L. 1963; amd. Sec. 41, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted references to "department of livestock" through-

out the section for references to "commissioner"; substituted "This chapter, however, does not" for "Nothing in this act, however" at the beginning of the third sentence; and made minor changes in phraseology, punctuation and style.

**3-2504. Wrongful use of label—penalty—injunction—prosecutions.** A person who uses the Montana quality label in violation of this chapter, or who, with the intent to mislead or deceive, uses an imitation, counterfeit, or likeness thereof on the label, tag, seal, container, sign, or otherwise on any product which is sold or offered for sale, or who uses the Montana quality label or, with intent to mislead or deceive, uses an imitation, counterfeit, or likeness thereof on or in connection with an offer to sell

or advertisement for the sale or use of any product which does not in fact lawfully bear the Montana quality label, is guilty of a misdemeanor and shall be fined not less than ten (\$10) dollars nor more than five hundred (\$500) dollars. The word "Montana" may not be used on a brand or label not of No. 1 quality, its equivalent, or better. A district court in this state has jurisdiction to enjoin the use of the Montana quality label or an imitation, counterfeit, or likeness thereof used in violation of this chapter. The department of livestock may cause prosecutions for violations of this chapter, as well as the injunction proceedings under this section, to be instituted through the attorneys for the state or the counties and cities, or otherwise in its discretion.

**History:** En. Sec. 4, Ch. 290, L. 1947; amd. Sec. 42, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted references to "this chapter" throughout the section for references to "this act"; substituted "A district court" for "Any court

of record having general chancery jurisdiction" at the beginning of the third sentence; substituted "department of livestock" for "commissioner of agriculture" in the last sentence; and made minor changes in phraseology, punctuation and style.

**3-2505. Definitions.** Unless the context requires otherwise, in this chapter: (1) "Person" includes an individual, partnership, association, union, or corporation.

(2) "Agricultural and food product" includes a horticultural, viticultural, dairy, livestock, poultry, bee, other farm or garden product, fish or fishery product, and other foods.

(3) "Continuous official inspection" means that an employee or a licensed representative of the department of agriculture or the department of livestock or the United States department of agriculture regularly and continuously examines the commodity as it is being packed so as to have knowledge of the quality that goes into each package.

**History:** En. Sec. 5, Ch. 290, L. 1947; amd. Sec. 43, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment inserted the numer-

ical subdivision designations; inserted "or the department of livestock" after "department of agriculture" in subdivision (3); and made minor changes in phraseology and punctuation.

## CHAPTER 26—GRASSHOPPER ERADICATION AND CONTROL

(Repealed—Section 35, Chapter 13, Laws of 1977)

### 3-2601 to 3-2606. Repealed.

#### Repeal

Sections 3-2601 to 3-2606 (Secs. 1 to 5, 7, Ch. 76, L. 1949; Sec. 1, Ch. 343, L.

1977), relating to grasshopper eradication and control, were repealed by Sec. 35, Ch. 13, Laws 1977.

## CHAPTER 27—CONTROL OF NOXIOUS RODENT PESTS

#### Section

- 3-2701. Department of livestock to operate rodent control program.
- 3-2702. Expenditures authorized.
- 3-2704. Purchase and sale of rodent control supplies.



**3-2701. Department of livestock to operate rodent control program.** The department of livestock may establish and operate organized and systematic programs for the control and suppression of jack rabbits, prairie dogs, ground squirrels, pocket gophers, rats, mice, and other rodents and related animals in this state when they are injurious to agriculture, other industries, and the public health. For this purpose, the department of livestock may enter into written agreements with appropriate federal agencies, other state agencies, counties, associations, corporations, or individuals covering the methods and procedures to be followed in the control and suppression of these noxious rodents and related animals, the extent of supervision to be exercised by the department of livestock, and the use and expenditure of funds appropriated, when this co-operation is necessary to promote the control and suppression of noxious rodents and related animals.

**History:** En. Sec. 1, Ch. 136, L. 1949; amd. Sec. 44, Ch. 310, L. 1974; amd. Sec. 1, Ch. 242, L. 1975.

#### Amendments

The 1974 amendment substituted references to "department of livestock" throughout the section for references to "state of Montana livestock commission" and made minor changes in phraseology and punctuation.

The 1975 amendment substituted "may establish and operate organized and systematic programs for the control and suppression" for "shall co-operate with the United States department of the interior,

fish and wildlife service, in the control and destruction" in the first sentence; deleted "in accordance with organized and systematic plans of the fish and wildlife service covering the controls of these noxious rodents and related animals" at the end of the first sentence; substituted "appropriate federal agencies \* \* \* or individuals" for "fish and wildlife service" in the second sentence; substituted "suppression of noxious rodents" for "destruction of noxious rodents" in the second and third sentences; deleted "and the fish and wildlife service" after "livestock" in the second sentence; and made minor changes in phraseology.

**3-2702. Expenditures authorized.** The department of livestock may make expenditures for equipment, materials, supplies, and other expenses, including expenditures for personal services, which are necessary to execute the functions imposed on it by this chapter.

**History:** En. Sec. 2, Ch. 136, L. 1949; amd. Sec. 45, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "de-

partment of livestock" for "state of Montana livestock commission"; substituted "this chapter" for "this act" at the end of the section; and made minor changes in phraseology.

**3-2704. Purchase and sale of rodent control supplies.** In addition to the expenditures authorized in section 3-2702 the department of livestock may purchase rodent control supplies, including rodent baits, for the use of co-operating governmental agencies, counties, associations, corporations, or individuals in the control of noxious rodents and related animals, and to make these supplies and baits available to the co-operators at approximate cost.

**History:** En. Sec. 4, Ch. 136, L. 1949; amd. Sec. 105, Ch. 147, L. 1963; amd. Sec. 46, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "ex-

penditures authorized in section 3-2702" for "expenditures heretofore authorized"; substituted "department of livestock" for "state of Montana livestock commission"; and made minor changes in phraseology.

## CHAPTER 28—RURAL REHABILITATION

## Section

- 3-2801. Trust assets of rural rehabilitation corporation—department of agriculture designated to make application.
- 3-2802. Agreements with United States secretary of agriculture authorized.
- 3-2803. Administration of trust assets.
- 3-2804. Powers of department—claims and obligations—property acquired at foreclosure.
- 3-2805. United States and secretary of agriculture free from liability.
- 3-2806. Rules.

**3-2801. Trust assets of rural rehabilitation corporation—department of agriculture designated to make application.** The department of agriculture is designated as the department of Montana state government to apply to the secretary of agriculture of the United States, or any other proper federal official, under Public Law 499, eighty-first Congress, approved May 3, 1950, for the return of the trust assets, either funds or property, held by the United States as trustee in behalf of the Montana rural rehabilitation corporation.

History: En. Sec. 1, Ch. 112, L. 1951; amd. Sec. 103, Ch. 218, L. 1974.

**Amendments**

The 1974 amendment substituted “de-

partment of agriculture” for “commissioner of agriculture”; substituted “department of Montana state government” for “state official of the state of Montana”; and made minor changes in phraseology.

**3-2802. Agreements with United States secretary of agriculture authorized.** The department shall enter into agreements with the secretary of agriculture of the United States under section 2 (f) of Public Law 499, 81st Congress upon terms and conditions and for periods of time as are mutually agreeable, authorizing the secretary of agriculture of the United States to accept, administer, spend, and use in the state all or any part of the trust assets or any other funds of the state which may be appropriated for carrying out the purposes of Titles I and II of the Bankhead-Jones Farm Tenant Act, in accordance with the applicable provisions of Title IV thereof, as amended; and do all things necessary to carry out the agreements.

History: En. Sec. 1, Ch. 112, L. 1951; amd. Sec. 104, Ch. 218, L. 1974.

**Amendments**

The 1974 amendment substituted “de-

partment” for “commissioner of agriculture” in the beginning of the section; and made minor changes in phraseology.

**3-2803. Administration of trust assets.** Funds and the proceeds of the trust assets which are not authorized to be administered by the secretary of agriculture of the United States under section 3-2802 shall be received by the department, and paid by it to the state treasurer for deposit in the federal and private grant clearance fund and used for expenditure or obligation by the department for the purpose of section 3-2802, or for the rural rehabilitation purposes permissible under the charter of the now dissolved Montana rural rehabilitation corporation as may be agreed upon between the department and the secretary of agriculture of the United States, subject to Public Law 499.

**History:** En. Sec. 3, Ch. 112, L. 1951; amd. Sec. 45, Ch. 147, L. 1963; amd. Sec. 105, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "commissioner of agriculture" in two places; and made minor changes in phraseology.

**3-2804. Powers of department—claims and obligations—property acquired at foreclosure.** (1) The department may:

(a) Collect, compromise, adjust, or cancel claims and obligations arising out of or administered under this chapter or under any mortgage, lease, contract, or agreement entered into or administered under this chapter and, if necessary, pursue them to final collection in any court having jurisdiction;

(b) Bid for and purchase at any execution, foreclosure, or other sale, or otherwise acquire property upon which the department has a lien by reason of a judgment or execution, or which is pledged, mortgaged, or conveyed, or which otherwise secures any loan or other indebtedness owing to or acquired by the department under this chapter;

(c) Accept title to any property so purchased or acquired; operate or lease the property for a period necessary to protect the investment; and sell or otherwise dispose of the property in a manner consistent with this chapter.

(2) The authority granted to the department in this section may be delegated to the secretary of agriculture of the United States with respect to funds or assets authorized to be administered and used by him under agreements entered into under section 3-2802.

**History:** En. Sec. 4, Ch. 112, L. 1951; amd. Sec. 106, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "commissioner of agriculture" and "chapter" for "act" throughout the section; substituted "if necessary" for

"if, in his judgment, necessary and advisable" before "pursue" in subsection (1)(a); substituted "granted to the department in this section" for "herein contained" after "authority" in subsection (2); and made minor changes in phraseology, punctuation and style.

**3-2805. United States and secretary of agriculture free from liability.** The United States and the secretary of agriculture are free from liability by virtue of the transfer of the assets to the department under this chapter.

**History:** En. Sec. 5, Ch. 112, L. 1951; amd. Sec. 107, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment substituted "de-

partment under this chapter" for "commissioner of agriculture of the state of Montana pursuant to this act"; and made minor changes in phraseology.

**3-2806. Rules.** The department may adopt rules necessary to carry out the provisions of this chapter.

**History:** En. 3-2806 by Sec. 1, Ch. 30, L. 1977.

#### Title of Act

An act to provide the department of agriculture authority to adopt rules concerning rural rehabilitation.



## CHAPTER 29—WHEAT RESEARCH AND MARKETING

## Section

- 3-2902. Declaration of policy.
- 3-2904. Definitions.
- 3-2906. Compensation—per diem.
- 3-2909. Powers of the committee.
- 3-2911. Annual assessment on wheat and barley grown.
- 3-2913. Buyer's delivery of invoice to grower—form—filing of sworn statement—payment of assessment.
- 3-2915. Receipt of gifts, grants or donations for research purposes.
- 3-2916. Official bonds of employees.
- 3-2917. Research and marketing account—sources—use—expenditures.

**3-2901. Repealed.****Repeal**

Section 3-2901 (Sec. 1, Ch. 314, L. 1967),

relating to the short title of the act, was repealed by Sec. 173, Ch. 218, Laws 1974.

**3-2902. Declaration of policy.** In the presence of the facts that wheat is the principal grain crop produced in Montana, and as such is an agricultural resource of the first magnitude in the economy of the inhabitants of Montana, a prime factor in the production of wealth and the development and stabilization of property values and of activities and enterprises which are bases and sources of important contributions by taxation to the public revenues, and that Montana wheat is a commodity which enters a world market highly competitive in character, and that barley is also an important crop, it is hereby declared to be the public policy of the state of Montana to protect and foster the health, prosperity and general welfare of its people by encouraging and promoting intensive, scientific and practical research into all phases of wheat and barley culture and production, marketing and use and into the development of markets for wheat and barley grown in Montana by the department of agriculture.

**History:** En. Sec. 2, Ch. 314, L. 1967; amd. Sec. 108, Ch. 218, L. 1974; amd. Sec. 1, Ch. 71, L. 1975.

research therein as constituted by this act" from the end of the section.

The 1975 amendment inserted "and that barley is also an important crop" near the middle of the section; and inserted "and barley" after "wheat" in two places near the end of the section.

**Amendments**

The 1974 amendment deleted "of the state of Montana and the division of wheat

**3-2903. Repealed.****Repeal**

Section 3-2903 (Sec. 3, Ch. 314, L. 1967), relating to the establishment of the wheat

research and marketing division and administrative committee, was repealed by Sec. 173, Ch. 218, Laws 1974.

**3-2904. Definitions.** As used in this act, unless the context requires otherwise:

(1) "Committee" means the Montana wheat research and marketing committee provided for in section 82A-304;

(2) "Grower" means any landowner personally engaged in growing wheat or barley, a tenant of the landowner personally engaged in growing wheat or barley, or both the owner and the tenant jointly; and includes a person, partnership, association, corporation, co-operative, trust, share-cropper, and any and all other business units, devices, and arrangements;

(3) "First purchaser" means any person, public or private corporation, association, or partnership, buying, accepting for shipment, or otherwise acquiring the property in or to wheat or barley from a grower, and shall include a mortgagee, pledgee, lienor, or other person, public or private, having a claim against the grower, where the actual or constructive possession of such wheat or barley is taken as part payment or in satisfaction of such mortgage, pledge, lien, or claim;

(4) "Commercial channels" means the sale of wheat or barley for any use, when sold to any commercial buyer, dealer, processor, co-operative, or to any person, public or private, who resells any wheat or barley or product produced from wheat or barley; and

(5) "Sale" includes any pledge or mortgage of wheat or barley, after harvest, to any person, public or private.

**History:** En. Sec. 4, Ch. 314, L. 1967; amd. Sec. 109, Ch. 218, L. 1974; amd. Sec. 2, Ch. 71, L. 1975.

#### Amendments

The 1974 amendment substituted the present definition of "Committee" for "the

administrative committee hereby established to be known as the Montana wheat research and marketing committee."

The 1975 amendment inserted "or barley" after "wheat" throughout the section.

### 3-2905. Repealed.

#### Repeal

Section 3-2905 (Sec. 5, Ch. 314, L. 1967), relating to the duties and composition of

the Montana wheat research and marketing committee, was repealed by Sec. 173, Ch. 218, Laws 1974.

**3-2906. Compensation—per diem.** Members of the committee shall receive no salary, but shall be paid, from the wheat research and marketing account in the federal and private revenue fund, a per diem of twenty-five dollars (\$25) for each day they are engaged in the transaction of official business, together with their actual and necessary travel expenses, as provided for in sections 59-538, 59-539, and 59-801, incurred while on official business.

**History:** En. Sec. 6, Ch. 314, L. 1967; amd. Sec. 110, Ch. 218, L. 1974; amd. Sec. 3, Ch. 71, L. 1975; amd. Sec. 5, Ch. 439, L. 1975.

#### Compiler's Notes

This section was amended twice in 1975, once by Ch. 71 and once by Ch. 439. Neither of the amendatory acts mentioned the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

#### Amendments

The 1974 amendment deleted "administrative" before "committee"; substituted "federal and private revenue fund" for "revolving fund"; and substituted "engaged in the transaction of official business" for "actually and necessarily engaged in the transaction of official business under this act."

Chapter 71, Laws of 1975 increased the per diem from \$20 to \$25.

Chapter 439, Laws of 1975 inserted "travel" before "expenses"; and inserted "as provided for in sections 59-538, 59-539, and 59-801."

### 3-2907. Repealed.

#### Repeal

Section 3-2907 (Sec. 7, Ch. 314, L. 1967), relating to the removal from office of

members of the wheat research and marketing committee, was repealed by Sec. 173, Ch. 218, Laws 1974.

**3-2909. Powers of the committee.** (1) The committee may:

- (a) Adopt rules necessary for the administration of this act;
- (b) Provide, through the department, for the enforcement of this act;
- (c) Provide for the conduct of research into the production, marketing, and uses of wheat and barley;
- (d) Enter into contracts or agreements with Montana state university and other local, state, or national organizations, public or private, for the purposes of improving wheat or barley quality, increasing the efficiency of production, developing marketing knowledge, developing markets, determining new uses for wheat or barley, developing alternative crops for wheat or barley, and carrying out all research and marketing contemplated by this act. The committee may not establish research units or agencies of its own.

(2) No researchers or professional or scientific personnel may be employed to carry out this act except as provided in subsection (1) (d) of this section.

(3) None of the powers or duties provided for in this act permit participation in state or federal political action by the committee.

**History:** En. Sec. 9, Ch. 314, L. 1967; amd. Sec. 111, Ch. 218, L. 1974; amd. Sec. 4, Ch. 71, L. 1975.

**Amendments**

The 1974 amendment rewrote this section. For prior version, see parent volume.

The 1975 amendment inserted "and barley" after "wheat" in subdivisions (1)(c), and (1)(d).

**3-2910. Repealed.****Repeal**

Section 3-2910 (Sec. 10, Ch. 314, L. 1967), relating to the establishment of an administrative office for the wheat research

and marketing division and committee, was repealed by Sec. 173, Ch. 218, Laws 1974.

**3-2911. Annual assessment on wheat and barley grown.** There is hereby levied an annual assessment of two and one-half ( $2\frac{1}{2}$ ) mills per bushel upon all wheat grown, and, five (5) mills per hundredweight on all barley grown in the state of Montana, and sold through commercial channels. The assessment is hereby levied and imposed on each grower of wheat or barley in the state of Montana:

(1) in the case of sale of wheat or barley, at the time of any sale of wheat or barley by a grower, and shall be collected by the first purchaser of the wheat or barley from the grower at the time of each settlement for wheat or barley purchased, or

(2) in the case of a pledge or mortgage of wheat or barley as security for a loan under any federal price support program, the assessment shall be collected by deducting the amount thereof from the proceeds of such loan at the time the loan is made by the agency or person making the loan.

The assessment levied under the provisions of this act, shall be deducted and collected as provided by this act, whether such wheat or barley is stored in this or any other state. The assessment shall attach to



each transaction, but no grower shall be subject to assessment more than once irrespective of the number of times it shall be the subject of a sale, pledge, mortgage or other transaction, the assessment being imposed and attaching on the initial sale, pledge, mortgage or other transaction in which the wheat or barley grower parts with title to the wheat or barley, or creates some interest therein in a pledgee, mortgagee or other person.

**History:** En. Sec. 11, Ch. 314, L. 1967; amd. Sec. 1, Ch. 201, L. 1971; amd. Sec. 5, Ch. 71, L. 1975.

#### Amendments

The 1971 amendment deleted "unless a grower or his agent at the time of trans-

action shall request in writing that no assessment be made" from the end of the preliminary paragraph.

The 1975 amendment inserted the five mill assessment on barley; and inserted "or barley" after "wheat" throughout the section.

### 3-2912. Repealed.

#### Repeal

Section 3-2912 (Sec. 12, Ch. 314, L. 1967), relating to the inapplicability of assess-

ment to the sale of wheat to the federal government, was repealed by Sec. 173, Ch. 218, Laws 1974.

**3-2913. Buyer's delivery of invoice to grower—form—filing of sworn statement—payment of assessment.** (1) The purchaser of the wheat or barley at the time of sale, or the pledgee, mortgagee, or other lender at the time of the loan or advance, shall give separate invoices for each purchase to the grower. The invoices shall be on forms approved by the department and shall show:

- (a) The name and address of the grower and seller;
- (b) The name and address of the purchaser or the lender;
- (c) The number of bushels of wheat or hundredweights of barley sold, mortgaged, or pledged;
- (d) The date of the purchase, mortgage, or pledge and the amount of assessment collected and remitted to the department.

(2) The purchaser, mortgagee, or pledgee shall file with the department, on forms prescribed by the department, within twenty (20) days after the end of a month in which he purchases a grower's wheat or barley or in which a lender makes a loan or advance on a grower's wheat or barley, a sworn statement of the number of bushels of wheat or hundredweights of barley purchased in Montana or the number of bushels of wheat or hundredweights of barley mortgaged or pledged, or otherwise transferred or lienied as security for a loan, during the preceding calendar month. At the time the sworn statement is filed, the purchaser or lender shall pay to the department the assessment provided for in section 3-2911 for deposit in the wheat research and marketing account in the revolving fund.

(3) The statement referred to in subsections (1) and (2) of this section shall be legibly written and shall be entirely free of any corrections or erasures. A person may not alter any part of a statement.

(4) After thirty (30) days and before ninety (90) days following the deduction of the assessment by the first purchaser or the first lender, the grower may, upon the submission of a written, verified request to

the department, obtain a refund of the assessment. The request shall be accompanied by the original invoices received by the grower at the time of settlement. The department shall keep complete records of all refunds made under the provisions of this section. Records of refunds may be destroyed two (2) years after the refund is made. All original invoices shall be returned to the grower with the refund payment.

**History:** En. Sec. 13, Ch. 314, L. 1967; amd. Sec. 2, Ch. 201, L. 1971; amd. Sec. 112, Ch. 218, L. 1974; amd. Sec. 6, Ch. 71, L. 1975.

#### Amendments

The 1971 amendment added subsection (4) and made minor changes in style.

The 1974 amendment deleted "settlement therefor on" before "sale" and substituted "department" for "administrative committee" in subsection (1); substituted "department" for "commissioner of agriculture" in subsection (1)(d); substituted "department" for "wheat research and marketing division of the department of agriculture" in the first sentence of subsection (2); substituted "within twenty (20) days \* \* \* a grower's wheat" in the first sentence of subsection (2) for a clause relating to the twentieth day of each

calendar month (see parent volume); substituted "department" for "commissioner" and "section 3-2911" for "act" in the second sentence of subsection (2); substituted the last sentence of subsection (3) for a clause making alteration of a statement a misdemeanor; substituted "department" for "administrative committee through the commissioner of agriculture" in the first sentence of subsection (4) and for "wheat research and marketing division" in the third sentence of subsection (4); substituted "section" for "act" in the third sentence of subsection (4); and made minor changes in phraseology, punctuation, and style.

The 1975 amendment inserted "or barley" or "or hundredweights of barley" after "wheat" or "bushels of wheat" throughout the section.

### 3-2914. Repealed.

#### Repeal

Section 3-2914 (Sec. 14, Ch. 314, L. 1967; Sec. 5, Ch. 93, L. 1969), relating to reports

by the commissioner, was repealed by Sec. 173, Ch. 218, Laws 1974.

**3-2915. Receipt of gifts, grants or donations for research purposes.** The department may receive any gifts, grants, or donations for any research of scientific inquiries conducted under this act, and may spend them in compliance with the conditions of the grants, gifts, and donations.

**History:** En. Sec. 15, Ch. 314, L. 1967; amd. Sec. 113, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "Montana wheat research

and marketing division"; deleted "provided such conditions are valid under the laws of the state of Montana, and in aid of the purposes of this act" from the end of the section; and made minor changes in phraseology.

**3-2916. Official bonds of employees.** Employees of the department participating in the handling of assessment receipts or other receipts shall be bonded for the faithful and safe handling and accounting for the receipts while in their hands and for faithful compliance with this act.

**History:** En. Sec. 16, Ch. 314, L. 1967; amd. Sec. 114, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment substituted "Employees of the department" for "The chief

of the Montana wheat research and marketing division and any deputy or assistant"; deleted "by or for the division" before "shall be bonded"; and made minor changes in phraseology.

**3-2917. Research and marketing account—sources—use—expenditures.** (1) There shall be an account in the federal and private revenue fund

known as the wheat research and marketing account. The following shall be placed in the account:

(a) the proceeds of all mileage [millage] levies collected under this chapter; and

(b) the proceeds from all gifts, grants, or donations to the department for research authorized under this chapter.

(2) The account shall be maintained for the purposes of this chapter and shall be separate from all other accounts of the department.

(3) The department may direct the board of investments to invest funds from the account pursuant to the provisions of the unified investment program for state funds. The income from such investments shall be credited to the wheat research and marketing account.

**History:** En. Sec. 17, Ch. 314, L. 1967; amd. Sec. 2, Ch. 70, L. 1973; amd. Sec. 115, Ch. 218, L. 1974; amd. Sec. 7, Ch. 71, L. 1975; amd. Sec. 2, Ch. 16, L. 1977.

#### Compiler's Notes

Section 7, Ch. 71, Laws 1975 made no change in this section.

The compiler inserted "millage" in brackets in subdivision (1)(a) to correct an apparently erroneous reference.

#### Amendments

The 1973 amendment substituted "federal and private revenue fund" for "revolving fund" in the first sentence of subsection (1); deleted "revolving" before "account" in the first sentence of subsection (1); deleted a former subsection (3) which read "There shall be transferred to the general fund one per cent (1%) of all

the moneys collected"; redesignated former subsection (4) as subsection (3); and made a minor change in phraseology.

The 1974 amendment substituted "chapter" for "act" in subdivision (1)(a) and "research authorized under this chapter" for "researches conducted by the division of wheat research and marketing" in subdivision (1)(b); substituted "purposes of this chapter" for "use of the wheat research and marketing division of the department of agriculture" in subsection (2); deleted former subsection (3) which read "There shall be paid out of this account claims for expenditures under this act as are approved by the commissioner of agriculture and the state controller"; and made minor changes in phraseology.

The 1977 amendment added subsection (3); and made minor changes in punctuation and style.

### 3-2918. Repealed.

#### Repeal

Section 3-2918 (Sec. 18, Ch. 314, L. 1967), relating to contracts for carrying out re-

search, was repealed by Sec. 173, Ch. 218, Laws 1974.

### 3-2920. Repealed.

#### Repeal

Section 3-2920 (Sec. 21, Ch. 314, L. 1967), relating to the duration of the

act, was repealed by Sec. 1, Ch. 53, Laws 1973.

## CHAPTER 30—AGRICULTURAL MARKETING

#### Section

3-3001. Intent of legislature.

3-3002. Definitions.

3-3003. Department's marketing duties.

3-3004. State agencies participating in marketing to co-operate.

**3-3001. Intent of legislature.** It is the intent of the legislature that the department of agriculture co-ordinate marketing from the initial producer to the consumer and reduce marketing cost by assisting both producer and industry to find ways to more efficiently market their



products. The department shall also endeavor to develop new and improved systems of marketing which will result in the stabilization and improvement of returns for industry and the producer. It shall work with farm leaders, farmer co-operatives, processors, wholesalers, retailers, representatives of the transportation industry, consumer groups, and others as a means of correcting marketing inefficiencies or eliminating restrictions.

**History:** En. Sec. 1, Ch. 330, L. 1969; Sec. 3-116, R. C. M. 1947; amd. and redes. 3-3001 by Sec. 5, Ch. 218, L. 1974.

mendations in the field of agricultural marketing.

#### **Title of Act**

An act to establish within the department of agriculture of the state of Montana an agricultural marketing co-ordinator and empower the co-ordinator to analyze, advise, and make necessary recom-

#### **Amendments**

The 1974 amendment renumbered this section; substituted references to the department of agriculture for references to the agricultural marketing co-ordinator throughout; and made minor changes in style and phraseology.

**3-3002. Definitions.** As used in this chapter unless the context requires otherwise:

(1) "Marketing" means all activities involved in getting agricultural products from the producer to the consumer and includes transportation, processing, and distribution.

(2) "Agricultural products" means crops, livestock, and livestock products.

**History:** En. Sec. 2, Ch. 330, L. 1969; Sec. 3-117, R. C. M. 1947; amd. and redes. 3-3002 by Sec. 6, Ch. 218, L. 1974.

section; deleted a third subdivision reading "(3) 'Commissioner' means commissioner of agriculture"; and made minor changes in punctuation and phraseology.

#### **Amendments**

The 1974 amendment renumbered this

**3-3003. Department's marketing duties.** The department shall:

(1) Keep abreast of research results in the subject matter area of marketing;

(2) Co-ordinate work with local, state, and national planning groups and other interested parties in helping them identify major problem areas and needs in marketing;

(3) Develop and carry out appropriate action programs that will result in significant improvements being made by those people concerned with problems of marketing;

(4) Co-ordinate efforts with representatives of other agencies or organizations or persons who are concerned with related programs;

(5) Investigate the costs of marketing;

(6) Gather and disseminate information concerning supply, demand, favorable marketing information, prevailing prices, and changes in marketing movements, practices, and rates, including common and cold storage of food products;

(7) Promote, assist, and encourage the organization and operation of co-operative and other associations and organizations for improving the relations and services among producers, distributors, and consumers of food products;

(8) Investigate the practice and methods concerning the marketing of agricultural products;

(9) Act as mediator or arbitrator, when invited, in a controversy or issue that may arise between producers and distributors;

(10) Assist producers and distributors in the economical and efficient distribution of agricultural products at fair prices;

(11) Appear and be heard at any hearing involving agricultural marketing affecting Montana.

History: En. Sec. 4, Ch. 330, L. 1969;  
Sec. 3-119, R. C. M. 1947; amd. and redes.  
3-3003 by Sec. 7, Ch. 218, L. 1974.

section; substituted references to the department for references to the co-ordinator; and made minor changes in style, punctuation and phraseology.

#### Amendments

The 1974 amendment renumbered this

**3-3004. State agencies participating in marketing to co-operate.** All agencies of the state which participate in marketing shall co-operate with and assist the department.

History: En. Sec. 8, Ch. 330, L. 1969;  
Sec. 3-123, R. C. M. 1947; amd. and redes.  
3-3004 by Sec. 8, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment renumbered this section; substituted "department" for "agricultural marketing co-ordinator"; and made minor changes in phraseology.

## CHAPTER 31—APIARIES

### Section

- 3-3101. Definitions.
- 3-3102. Apiaries—powers and duties of the department of agriculture.
- 3-3103. Registration.
- 3-3104. Changing locations—enlarging or selling apiaries.
- 3-3105. Apiaries—termination of rights—abandonment.
- 3-3106. Registration fees.
- 3-3107. Inspection of bees or used beekeeping equipment transported interstate.
- 3-3108. Importation of bees in combless packages.
- 3-3109. Disposition of fees.
- 3-3110. Penalties.
- 3-3111. Separability of act.
- 3-3112. Orders effective until reversed or modified by court.

**3-3101. Definitions.** Unless the context requires otherwise, in this chapter:

(1) "Apiary" means a place where one (1) or more colonies of bees are kept, or one or more hives containing honeycombs or bee combs are kept.

(2) "Equipment" means hives, supers, frames, veils, gloves, or any apparatus, tools, machines, or other devices used in the handling and manipulation of bees, honey, wax, and hives, and includes containers of honey and wax which may be used in an apiary or in transporting bees and their products and apiary supplies.

(3) "Hive" means a frame hive, box hive, box, barrel, log gum, skep, or other receptacle or container, natural or artificial, or a part of a container, which may be used as a domicile for bees.

(4) "Bees" means any stage of the bees in the genus *Apis*.

(5) "Bee diseases" means American or European foulbrood, sacbrood, bee paralysis, or other disease or abnormal condition of egg, larval, pupal, or adult stages of bees.

(6) "Colony" means the hive and all equipment used in connection with the hive.

(7) "Persons" means individuals, associations, partnerships, or corporations.

(8) "Queen Apiary" means an apiary or premises in which queen bees are reared or kept for sale or gift.

**History:** En. Sec. 1, Ch. 79, L. 1947; amd. Sec. 1, Ch. 475, L. 1973; Sec. 82-805, R. C. M. 1947; amd. and redes. 3-3101 by Sec. 128, Ch. 218, L. 1974.

#### Amendments

The 1973 amendment substituted "bees in the genus, *Apis*" for "common honeybee *Apis mellifera*" at the end of subdivision (d) (now subdivision (4)).

The 1974 amendment renumbered this section; inserted "Unless the context requires otherwise, in this chapter" at the beginning of the section; substituted "or a part of a container" for "or any part thereof" in subdivision (3); substituted "with the hive" for "therewith" in subdivision (6); and made other minor changes in phraseology, punctuation and style.

### 3-3102. Apiaries—powers and duties of the department of agriculture.

(1) To prevent the spread of contagious and infectious disease among bees and apiaries, the department of agriculture may:

(a) order the transfer of colonies of bees from hives or containers which cannot be properly examined for brood or other diseases to other hives or containers;

(b) order disinfection of any bee, beehive, brood comb, or any other equipment which is infected or contaminated and burn any infected or contaminated bee, beehive, brood comb, or any other equipment if, in its judgment, disinfection will not remove the infection or contamination. Before burning any property, the department shall give the owner or person in charge a written notice at least 5 days before the date on which the property will be burned. The notice shall be given by certified mail or personal service upon the owner or person in charge of the property.

(c) quarantine any apiary where foulbrood or any contagious or infectious diseases are present and, during the quarantine, prevent the removal from the apiary of any bees or equipment except under a special permit issued by the department permitting the removal under conditions prescribed by it. A person may not sell or offer for sale any apiary, bees, or equipment which are under quarantine unless a permit authorizing the sale or removal is issued by the department. Written notice of quarantine shall be posted by the department, owner, or person in charge at the quarantined apiary at a conspicuous place, and a copy shall be personally served or sent by certified mail to the owner of the apiary or person in charge. The quarantine continues in effect until it is ordered removed and a copy of the removal order served in the same manner.

(d) inspect any apiary, hives, equipment, or premises for the presence of disease;

(e) promulgate and enforce rules adopted pursuant to this chapter.



(2) Any person failing to comply with a rule, order, or provision of a quarantine pursuant to this section is subject to penalties provided for in 3-3110.

**History:** En. Sec. 2, Ch. 79, L. 1947; amd. Sec. 1, Ch. 28, L. 1953; amd. Sec. 2, Ch. 475, L. 1973; Sec. 82-806, R. C. M. 1947; amd. and redes. 3-3102 by Sec. 129, Ch. 218, L. 1974; amd. Sec. 1, Ch. 25, L. 1977.

#### Amendments

The 1973 amendment deleted an initial phrase designating the state entomologist as the state apiarist; substituted references to the department of agriculture for references to the state apiarist or his deputies throughout the section; deleted a former subdivision (2) providing for the burning of infected hives; redesignated former subdivisions (3), (4) and (5) as subdivisions (2), (3) and (4); and substituted present subdivision (4) for one which included punishment for failure to place inspected premises in a sanitary

condition. For prior version, see sec. 82-806 in the parent volume.

The 1974 amendment renumbered this section; substituted "conditions prescribed by it" for "conditions and regulations to be prescribed by it" in the first sentence of subdivision (3); inserted "order" after "removal" in the last sentence of subdivision (3); and made other minor changes in phraseology, punctuation and style.

The 1977 amendment inserted the subsection (1) designation; redesignated former subdivisions (1) to (4) as subdivisions (1)(a) to (1)(d); substituted "certified mail" for "registered mail" in subdivisions (1)(b) and (1)(c); added subdivision (1)(e); added subsection (2); and made minor changes in punctuation and style.

**3-3103. Registration.** (1) A person who owns or possesses an apiary in the state shall, before April 1 each year, register the apiary.

(2) Applications shall be made to the department for registration application blanks.

(3) Registration application blanks shall be furnished by the department. The applicant shall provide the following information:

- (a) a statement of the name and place of residence;
- (b) the number of colonies of bees, hives, and equipment in the apiary;
- (c) the location of the apiary, setting forth specifically the location by sectional division to the nearest quarter section, and the township and range and, if within the corporate limits of a town or city, the number of the lot and block in the town or city;
- (d) the name of the owner, renter, or occupant of the land on which the apiary is located;
- (e) the date when the apiary was first established; and
- (f) other information the department may require under rules adopted by it for the protection, safety, and welfare of the public and beekeeping industry.

(4) Upon receipt of the application and payment of the fees prescribed, the department may issue a certificate of registration for an apiary, setting forth the name of the owner, the specific location, and the number of colonies of bees or size of the apiary authorized under the registration.

(5) In issuing certificates of registration for apiaries, if there is a conflict between applicants with respect to location, the department shall give preference to the applicant having the oldest continuous registered apiary.

(6) Certificates of registration may not be issued for new apiaries which are within such close proximity to established registered apiaries that there is or may be danger of spread of disease or that the proximity

will or may interfere with the proper feeding and honey flow of established apiaries.

(7) Before registering new apiaries, the department shall give at least 10 days' notice by certified mail to all registered apiarists likely to be affected by the proposed new apiary so that any party affected may file written protests with the department against registering the new apiary. If a written protest is filed, the department may require a hearing. Notice of the time and place of the hearing shall be given all parties interested by certified mail at least 10 days before the date set for the hearing.

(8) Suitable evidence of registration furnished by the department shall be posted by the apiary registrant in a conspicuous place at or near the apiary. If an owner has more than one apiary, suitable evidence of registration furnished by the department shall be posted at each apiary.

(9) A registration not applied for by April 1 of each year is a late registration and incurs an added penalty of 10% of the regular registration fee. Registrants who fail to apply for reregistration by April 1 of each year shall be notified of their delinquency by the department. The notification shall be by certified mail and is sufficient if deposited in a United States post office or mail box and addressed to the registrant at his last address appearing in the apiary registration files of the department at least 10 days before May 1. The registration of an apiary for which application for reregistration is not made by May 1 of each year is forfeited and all rights under the registration terminate.

**History:** En. Sec. 3, Ch. 79, L. 1947; amd. Sec. 2, Ch. 28, L. 1953; amd. Sec. 3, Ch. 475, L. 1973; Sec. 82-807, R. C. M. 1947; amd. and redes. 3-3103 by Sec. 130, Ch. 218, L. 1974; amd. Sec. 2, Ch. 25, L. 1977.

#### Amendments

The 1973 amendment deleted from the preliminary paragraph a clause relating to the date of the first annual registration; substituted references to the department throughout the section for references to the state apiarist; deleted from subdivision 2 (now subsection (3)) a second paragraph requiring reports of colonies added to the apiary; deleted from subdivision 6 (now subsection (7)) a third sentence authorizing action in the district court to set aside or modify the apiarist's order; substituted "suitable evidence of registration furnished by the department" in two places in subsection 8 for references to a certificate of registration and a duplicate certificate; deleted from subsection 8 a final sentence relating to the form of duplicate certificates; made changes in former subsection (11) (deleted by the 1974 amendment) and made minor changes in phraseology.

The 1974 amendment renumbered this section; deleted a first sentence marking it unlawful to possess or own an unregistered apiary; deleted "firm or corporation" after "person" in subsection (1); substituted "shall issue" for "shall be authorized to

issue" in subsection (4); deleted former subdivision 7, relating to permit to change location of apiary, and former subdivision 9, relating to forfeiture of unused apiary locations; deleted former subdivision 11, relating to seizure of abandoned and diseased equipment, and former subdivision 12, relating to transfer of a right to an apiary location; and made minor changes in phraseology, punctuation and style.

The 1977 amendment substituted "registration application blanks" for "registration blanks" in subsections (2) and (3); deleted "and place of business of the owner" from the end of subdivision (3) (a); substituted "registered apiary" for "established location" at the end of subsection (5); substituted "registering new apiaries" for "authorizing the establishment of new locations" at the beginning of subsection (7); substituted "certified mail" for "registered mail" throughout the section; inserted "by the apiary registrant" in the first sentence of subsection (8); substituted "apiary" for "location of the colony of honeybees or beehives" at the end of the first sentence in subsection (8); substituted "The registration of an apiary" for "A location" at the beginning of the last sentence of subsection (9); substituted "registration" for "location" before "terminate" at the end of the last sentence of subsection (9); and made minor changes in phraseology, punctuation and style.



**3-3104. Changing locations—enlarging or selling apiaries.** (1) An owner of an established registered apiary may not change the location of the apiary without first receiving from the department authorization to establish the new apiary. In making the application, he shall specify the location of the apiary with the same particularity as in the application for original registration. If the new apiary is not used within 60 days after a new certificate of registration is issued, the certificate of registration lapses and all rights under the registration terminate. Registrations for new apiaries may not be issued for greater areas than the applicant can show are reasonably necessary for his needs consistent with good beekeeping practice.

(2) A registered apiary may be sold or transferred to a purchaser subject to this chapter, if all bees and equipment on the apiary are sold to the purchaser.

(3) A person enlarging an apiary so as to exceed the number of hives authorized under a certificate of registration is subject to the penalties in 3-3110.

**History:** En. 3-3104 by Sec. 131, Ch. 218, L. 1974; amd. Sec. 3, Ch. 25, L. 1977.

#### **Amendments**

The 1977 amendment substituted "authorization" for "a permit" near the end of the first sentence of subsection (1);

substituted references to certificates of registration for references to permits throughout the section; substituted "A registered apiary" for "Any right a beekeeper has to a location" at the beginning of subsection (2); added subsection (3); and made minor changes in phraseology.

**3-3105. Apiaries—termination of rights—abandonment.** (1) The registration of an apiary which is not stocked with bees during at least part of the normal build-up or honey-producing season is forfeited and all rights under the certificate of registration terminate.

(2) An apiary not regularly attended in accordance with good beekeeping practice, which comprises a hazard or threat to disease control in the beekeeping industry or which by reason of its physical condition or construction cannot be inspected, may be considered an abandoned apiary and may be seized by the department. Any diseased equipment or equipment which by reason of its physical condition or construction cannot be inspected may be burned, and the remainder may be sold at public auction. Proceeds, after the cost of the sale is deducted, shall be returned to the former owner or his estate. Before burning or selling any equipment, the department shall give the owner or person in charge a written notice at least 5 days before the burning or sale. The notice shall be given by certified mail or personal service upon the owner or person in charge of the property. If the owner or person in charge cannot be located, a certified letter sent to the owner's last address registered with the department is sufficient notice under this section.

**History:** En. 3-3105 by Sec. 132, Ch. 218, L. 1974; amd. Sec. 4, Ch. 25, L. 1977.

#### **Amendments**

The 1977 amendment substituted "The registration of an apiary" for "An old apiary location" at the beginning of subsection (1); substituted "certificate of

registration" for "location" at the end of subsection (1); deleted a second sentence of subsection (1) allowing for new registration at the next regular registration time; substituted "certified" for "registered" in the fifth and sixth sentences of subsection (2); and made minor changes in phraseology, punctuation and style.



**3-3106. Registration fees.** (1) Each year before a certificate of registration may be issued for an apiary, the owner or applicant for the certificate shall pay the department a registration fee in accordance with the following schedule of fees for the total number of colonies owned or possessed:

1 to	10 colonies of bees	\$ 2.50
11 to	50 colonies	5.00
51 to	200 colonies	10.00
201 to	300 colonies	15.00
301 to	500 colonies	20.00
501 to	1,000 colonies	30.00
1,001 to	2,000 colonies	35.00
2,001 to	3,000 colonies	45.00
3,001 to	4,000 colonies	55.00
4,001 to	5,000 colonies	65.00
5,001 colonies and upward		75.00

(2) If, after registration, additional or new colonies are authorized for a registered apiary, fees shall be paid by the registrant in accordance with the schedule in subsection (1) for the total number of colonies for that year.

**History:** En. Sec. 4, Ch. 79, L. 1947; amd. Sec. 1, Ch. 175, L. 1973; amd. Sec. 4, Ch. 475, L. 1973; Sec. 82-808, R. C. M. 1947; amd. and redes. 3-3106 by Sec. 133, Ch. 218, L. 1974; amd. Sec. 5, Ch. 25, L. 1977.

Chapter 475, Laws of 1973, made changes identical to those in Chapter 175 with the exception that "department" was substituted for "state apiarist."

The 1974 amendment renumbered this section and made minor changes in phraseology, punctuation and style.

The 1977 amendment substituted "authorized for a registered apiary" for "added" in subsection (2); inserted "by the registrant" in subsection (2); and made minor changes in punctuation.

#### Effective Date

Section 2 of Ch. 175, Laws 1973 read "This act is effective June 1, 1973."

#### Amendments

Chapter 175, Laws of 1973, substituted "department of agriculture" for "state apiarist"; changed the former classification of "301 to 400 colonies" to "301 to 500 colonies"; adjusted all registration fees upward; added new classifications for owners of more than 500 colonies; and deleted the second sentence of the second paragraph, which provided for a yearly \$3.00 fee for the registration of any apiary not within the former schedule.

**3-3107. Inspection of bees or used beekeeping equipment transported interstate.** (1) A person may not transport or bring into the state any used beekeeping equipment or containers, including honey to be extracted, unless it is certified and duly marked as disease-free by an official responsible for apiary regulations of the state from which it is being moved. The department shall be advised in advance of the date of entry and the destination of the material. Used equipment transported into the state may be quarantined by the department, in accordance with 3-3102(3), from the time it enters the state until it has been in use while under quarantine for a minimum of 90 days and at least until the following July 1. The department may also inspect and certify as disease-free bees or beekeeping equipment which is to be transported from Montana to a state which requires an inspection in the state of origin.

(2) The costs of making the inspections provided for in subsection (1) shall be paid in advance by the owner of the bees or equipment and

shall include a per diem of \$10, necessary traveling expenses, and a fee of \$5 for the issuance of a certificate of health. If inspection by an official of any other state is considered insufficient for the protection of the Montana bee industry by the department, the department shall so state by public statement. Importation of beekeeping materials, including honey for extracting, from that other state shall be denied unless the materials or honey are first inspected by the department and there is obtained from it a certificate of inspection showing that the materials or honey are apparently free from contagious or infectious disease. The costs of making the inspection shall be paid by the person requesting it, and inspection may be made at any point outside this state convenient to the person making the inspection. The department may require that the costs of making the inspection be paid in advance, and the costs shall include per diem of \$10, necessary traveling expenses, and a fee of \$5 for the issuance of the certificate of inspection. The beekeeping materials are also subject to quarantine as provided in this section.

**History:** En. Sec. 5, Ch. 79, L. 1947; amd. Sec. 3, Ch. 28, L. 1953; amd. Sec. 5, Ch. 475, L. 1973; Sec. 82-809, R. C. M. 1947; amd. and redes. 3-3107 by Sec. 134, Ch. 218, L. 1974; amd. Sec. 6, Ch. 25, L. 1977.

#### Amendments

The 1973 amendment substituted "an official responsible for apiary regulations" for "a state apiarist" in the first sentence of subsection (1); substituted "department" for references to the state apiarist or his deputies throughout the section; inserted the second paragraph of subsection (1); substituted "inspections provided in this section" for "inspections relating to the lifting of quarantine of said beekeeping equipment" in the first sentence of sub-

section (2); and substituted "owner of the bees or equipment" for "owner of said quarantined equipment" in the first sentence of subsection (2).

The 1974 amendment renumbered this section; substituted "A person may not" for "It shall be unlawful to" at the beginning of subsection (1); substituted reference to "subsection (3) of section 3-3102" in subsection (1) for reference to "subdivision 3 of section 82-806"; and made minor changes in phraseology, punctuation and style.

The 1977 amendment substituted "may be quarantined" for "shall be quarantined" in the third sentence of subsection (1); and made minor changes in phraseology, punctuation and style.

**3-3108. Importation of bees in combless packages.** A person or common carrier may not transport or bring into this state bees in combless packages unless they are accompanied by a certificate of health issued by the official inspector of the state or country from which they came.

**History:** En. Sec. 6, Ch. 79, L. 1947; Sec. 82-810, R. C. M. 1947; amd. and redes. 3-3108 by Sec. 135, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment renumbered this section; substituted "A person or common

carrier may not" for "It shall be unlawful to"; deleted a second sentence making it a violation of the act to transport bees into the state without a certificate of health; and made minor changes in phraseology.

**3-3109. Disposition of fees.** Registration and inspection fees collected under this chapter shall be transmitted by the department to the state treasurer, who shall deposit the moneys to the credit of the general fund.

**History:** En. Sec. 7, Ch. 79, L. 1947; amd. Sec. 6, Ch. 475, L. 1973; Sec. 82-811, R. C. M. 1947; amd. and redes. 3-3109 by Sec. 136, Ch. 218, L. 1974.

#### Amendments

The 1973 amendment substituted "department" for "state apiarist."

The 1974 amendment renumbered this section; substituted "chapter" for "act"; and made minor changes in phraseology.

**3-3110. Penalties.** A person violating this chapter is guilty of a misdemeanor and shall be fined not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500), or imprisoned in the county jail not exceeding one (1) year, or both fined and imprisoned.

**History:** En. Sec. 8, Ch. 79, L. 1947; Sec. 82-812, R. C. M. 1947; amd. and redes. 3-3110 by Sec. 137, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment renumbered the section; deleted "firm or corporation" after "person"; and made minor changes in phraseology.

**3-3111. Separability of act.** If any clause, sentence, section, paragraph, part or portion of this chapter shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, unconstitutional or inoperative, such judgment does not affect, impair or invalidate the validity of the chapter as a whole, or the remainder of this or any part thereof which can be given effect, but shall be confined in its operation to the particular clause, sentence, section, paragraph, part or portion directly adjudged to be so invalid, unconstitutional or inoperative.

**History:** En. Sec. 9, Ch. 79, L. 1947; Sec. 82-813, R. C. M. 1947; amd. and redes. 3-3111 by Sec. 138, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment renumbered this section; substituted "chapter" for "act" in two places and substituted "does not" for "shall not" after "judgment."

**3-3112. Orders effective until reversed or modified by court.** An order or rule adopted by the department, including an order refusing a permit for the establishment of a new apiary location, is effective until reversed or modified by a final decision of a court of competent jurisdiction, and while such action is pending, as defined in 93-8706. An injunction or other process or writ may not be issued by a court restraining enforcement until that final determination.

**History:** En. Sec. 10, Ch. 79, L. 1947; amd. Sec. 7, Ch. 475, L. 1973; Sec. 82-814, R. C. M. 1947; amd. and redes. 3-3112 by Sec. 139, Ch. 218, L. 1974; amd. Sec. 23, Ch. 13, L. 1977.

The 1974 amendment renumbered this section; and made minor changes in phraseology and punctuation.

The 1977 amendment deleted "Until reversed or modified by a court of competent jurisdiction" at the beginning of the section; substituted "of a court of competent jurisdiction" in the first sentence for "or final judgment"; and made a minor change in phraseology.

#### Amendments

The 1973 amendment substituted "department" for "state apiarist."

## CHAPTER 32—ITINERANT MERCHANTS

### Section

- 3-3201. "Itinerant merchant" defined.
- 3-3202. "Established place of business" defined.
- 3-3203. Persons not included.
- 3-3204. Who shall be exempt—affidavit.
- 3-3205. Itinerant merchant license required.
- 3-3206. Application for license—fee.
- 3-3207. Surety bond.
- 3-3208. License, issuance, form and display of.
- 3-3209. License nontransferable.
- 3-3210. Revocation of license.
- 3-3211. Administrative rules.



- 3-3212. Offending vehicle to be kept in custody.  
 3-3213. Disposition of license fees.  
 3-3214. Construction of act.  
 3-3215. Penalty.

**3-3201. "Itinerant merchant" defined.** For the purpose of this chapter, "itinerant merchant" means a person who buys, offers to buy, sells, or offers to sell in this state, at wholesale or retail, any produce as defined by section 3-3301, who does not hold a license under the provisions of chapter 33 of this Title, and transports the produce in this state by use of a motor vehicle, or by any other method of transportation, except as otherwise provided, or who has not secured a permit of exemption.

**History:** En. Sec. 1, Ch. 214, L. 1939;  
 Sec. 84-3001, R. C. M. 1947; amd. and  
 redes. 3-3201 by Sec. 144, Ch. 218, L. 1974;  
 amd. Sec. 4, Ch. 155, L. 1975.

section; substituted "chapter" for "act";  
 substituted reference to "section 3-3401  
 [3-3301]" for reference to "section 84-  
 3403"; and made minor changes in phrase-  
 ology and punctuation.

**Amendments**

The 1974 amendment renumbered this

The 1975 amendment corrected errone-  
 ous section and chapter references.

**3-3202. "Established place of business" defined.** "Established place of business," for the purpose of this chapter means a permanent warehouse, building, or structure, in which a permanent business is carried on in good faith and not for the purpose of evading this chapter, and in which stocks of the property being transported are produced, stored, or kept in quantities reasonably adequate for, and usually carried for, the requirements of the business, and which is recognized, licensed, and taxed as a permanent business at the place. The term does not mean residences, tents, temporary stands or other temporary quarters, a railway car, or permanent quarters occupied under a temporary arrangement.

**History:** En. Sec. 2, Ch. 214, L. 1939;  
 Sec. 84-3002, R. C. M. 1947; amd. and redes.  
 3-3202 by Sec. 145, Ch. 218, L. 1974.

**Amendments**

The 1974 amendment renumbered this  
 section; substituted "chapter" for "act"  
 in two places; and made minor changes  
 in phraseology and punctuation.

**3-3203. Persons not included.** The term "itinerant merchant" does not include the following:

(1) A person using a motor vehicle owned by him, whether operated by him or his agent, for the transportation of produce produced by him on owned or leased premises, when the entire course of the transportation extends not more than one hundred fifty (150) miles from his residence, whether the residence is within or outside this state;

(2) A person handling produce grown by him who has secured from the department of agriculture, before offering the produce for sale, a permit of exemption. The permit shall be issued by the department upon application and payment of a fee of one dollar (\$1). The applicant must first be able to satisfactorily show that he will sell, or offer for sale, only produce of his own production. The permit shall only allow the sale of produce of his own production and is forfeited if the holder sells or offers to sell any produce not of his own production;

(3) A person transporting property owned by him in a motor vehicle owned by him, whether operated by him or his agent, when the transportation is incident to a business conducted by him at an established place of business operated by him, either within or outside this state, and when the property is being transported to or from an established place of business, operated by him in this state;

(4) A person transporting property for his own consumption or use and not for sale.

History: En. Sec. 3, Ch. 214, L. 1939; Sec. 84-3003, R. C. M. 1947; amd. and redes. 3-3203 by Sec. 146, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment renumbered this

section; substituted "department" for "commissioner" twice in subdivision (2); and made minor changes in phraseology and punctuation.

**3-3204. Who shall be exempt—affidavit.** No person is exempt from this chapter unless he or the driver of the motor vehicle upon which his property is being transported, upon the request of a peace officer or person charged with the enforcement of this chapter, executes an affidavit containing those facts the department requires and delivers the affidavit to the peace officer or person. The affidavit must clearly show that the person claiming the exemption is entitled to one or more of the exemptions provided in this chapter.

History: En. Sec. 4, Ch. 214, L. 1939; Sec. 84-3004, R. C. M. 1947; amd. and redes. 3-3204 by Sec. 147, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment renumbered this section; substituted "chapter" for "act"

in three places; substituted "department" for "commissioner"; deleted "including all employees of the department of agriculture, labor and industry" after "person charged with the enforcement of this chapter"; and made minor changes in phraseology and punctuation.

**3-3205. Itinerant merchant license required.** A person may not engage in business as an itinerant merchant without obtaining a license from the department.

History: En. Sec. 5, Ch. 214, L. 1939; Sec. 84-3005, R. C. M. 1947; amd. and redes. 3-3205 by Sec. 148, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment renumbered this section; substituted "department" for "commissioner"; and made minor changes in phraseology.

**3-3206. Application for license—fee.** (1) An application for a license to engage in business as an itinerant merchant shall be made to the department upon forms prepared by it.

(2) A separate application and license is required for each motor vehicle to be operated. The application shall contain those facts the department requires. The fee for each license is one hundred dollars (\$100) for the calendar year in which it is issued, and each license expires December 31 of the calendar year in which issued. The proper fee shall accompany the application. The application shall be signed and sworn to by the applicant.

History: En. Sec. 6, Ch. 214, L. 1939; Sec. 84-3006, R. C. M. 1947; amd. and redes. 3-3206 by Sec. 149, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment renumbered this section; substituted "department" for "commissioner" in two places; and made minor changes in phraseology.

**3-3207. Surety bond.** A license may not be issued until the applicant has filed a surety bond issued by a company authorized to do business in the state. The bond must first be approved by the department and shall be for not less than one thousand dollars (\$1,000). The bond shall be in a form prescribed by the department and shall be conditioned upon the delivery of honest weights, measures, or grades, accurate representation as to quality or class of produce, the actual payment of checks, drafts, or other obligations delivered by the itinerant merchant in exchange for the purchase of produce, and the payment of all other obligations incurred by him.

**History:** En. Sec. 7, Ch. 214, L. 1939;  
Sec. 84-3007, R. C. M. 1947; amd. and redes.  
3-3207 by Sec. 150, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment renumbered this section; substituted "department" for "commissioner" in two places; and made minor changes in phraseology.

**3-3208. License, issuance, form and display of.** Upon approval of the application and bond and upon compliance with this chapter, the department shall issue the applicant an itinerant merchant's license in a form prescribed by the department. The license shall at all times be carried by the driver of the motor vehicle described and is at all times subject to inspection by any person.

**History:** En. Sec. 8, Ch. 214, L. 1939;  
Sec. 84-3008, R. C. M. 1947; amd. and redes.  
3-3208 by Sec. 151, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment renumbered this

section; substituted "department" for "commissioner" in two places; substituted "chapter" for "act"; and made minor changes in phraseology.

**3-3209. License nontransferable.** A license issued under this chapter may not be sold or transferred, and a license may not be transferred from one vehicle to another, without the written consent of the department.

**History:** En. Sec. 9, Ch. 214, L. 1939;  
Sec. 84-3009, R. C. M. 1947; amd. and redes.  
3-3209 by Sec. 152, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment renumbered this

section; substituted "department" for "commissioner of agriculture"; substituted "chapter" for "act"; and made minor changes in phraseology.

**3-3210. Revocation of license.** After a hearing the department may revoke a license issued under this chapter for failure to comply with any law.

**History:** En. Sec. 10, Ch. 214, L. 1939;  
Sec. 84-3010, R. C. M. 1947; amd. and redes.  
3-3210 by Sec. 153, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment renumbered this

section; substituted "department" for "commissioner of agriculture" and "chapter" for "act"; and made minor changes in phraseology.

**3-3211. Administrative rules.** The department shall adopt and enforce necessary and proper rules for the administration of this chapter.

**History:** En. Sec. 11, Ch. 214, L. 1939;  
Sec. 84-3011, R. C. M. 1947; amd. and redes.  
3-3211 by Sec. 154, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment renumbered this

section; substituted "department" for "commissioner of agriculture" and "chapter" for "act"; and made minor changes in phraseology.



**3-3212. Offending vehicle to be kept in custody.** A motor vehicle operated in violation of this chapter shall be kept in the custody of a law enforcement officer or person authorized to enforce this chapter and may not be operated except under its authority and solely for the purpose of taking it to the nearest convenient place of custody, until this chapter has been complied with.

History: En. Sec. 12, Ch. 214, L. 1939; Sec. 84-3012, R. C. M. 1947; amd. and redes. 3-3212 by Sec. 155, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment renumbered this

section; substituted "chapter" for "act" in two places; substituted "or person authorized to enforce this chapter" for "including all employees of the department of agriculture, labor and industry"; and made minor changes in phraseology.

**3-3213. Disposition of license fees.** All license fees received under this chapter by the department shall be deposited with the state treasurer and shall be used to defray the cost of administration and enforcement of this chapter.

History: En. Sec. 13, Ch. 214, L. 1939; Sec. 84-3013, R. C. M. 1947; amd. and redes. 3-3213 by Sec. 156, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment renumbered this

section; substituted "department" for "commissioner of agriculture" and "chapter" for "act"; and made minor changes in phraseology.

**3-3214. Construction of act.** Nothing in this act repeals or amends any statute delegating authority to any county or municipal corporation to license, tax, or regulate peddlers or itinerant merchants. This act does not repeal or amend any of the provisions of chapter 34 [33] of this Title.

History: En. Sec. 14, Ch. 214, L. 1939; Sec. 84-3014, R. C. M. 1947; amd. and redes. 3-3214 by Sec. 157, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment renumbered this section; and made minor changes in phraseology.

**3-3215. Penalty.** A person violating this act is guilty of a misdemeanor and shall be fined not less than twenty-five dollars (\$25) nor more than two hundred dollars (\$200).

History: En. Sec. 15, Ch. 214, L. 1939; Sec. 84-3015, R. C. M. 1947; amd. and redes. 3-3215 by Sec. 158, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment renumbered this section; and made minor changes in phraseology.

## CHAPTER 33—PRODUCE WHOLESALERS

- |  |   |
|--|---|
| <p>Section</p> <p>3-3301.</p> <p>3-3302.</p> <p>3-3303.</p> <p>3-3304.</p> <p>3-3305.</p> <p>3-3306.</p> <p>3-3307.</p> <p>3-3308.</p> <p>3-3309.</p> <p>3-3310.</p> <p>3-3311.</p> <p>3-3312.</p> | <p>Definitions.</p> <p>Produce wholesalers' license.</p> <p>Application for license—contents—bond—expiration date—schedule of commissions and charges to be filed.</p> <p>Investigation of applicant—hearings—grant or denial of license.</p> <p>Records to be kept—contents.</p> <p>Inspection and report concerning produce.</p> <p>Enforcement of chapter—hearings.</p> <p>Effect of appeal to district court.</p> <p>Rules for enforcement of chapter.</p> <p>Co-operation with similar agencies.</p> <p>Disposition of license fees.</p> <p>Violation—penalty.</p> |
|--|---|

**3-3301. Definitions.** Unless the context requires otherwise, in this chapter:

(1) "Produce" means the natural products of the farm, and includes, but is not limited to, natural products of the orchard, vineyard, garden, and apiary, raw and manufactured (except grains, dairy products, live-stock, poultry and poultry products), when handled for the purpose of resale.

(2) "Person" means an individual, group of persons, exchange, firm, copartnership, corporation, or association.

(3) "Dealer at wholesale" means a person who buys to sell at wholesale or contracts to buy to sell at wholesale, or who handles at wholesale on account of or as agent for another.

**History:** En. Sec. 3, Ch. 164, L. 1933; Sec. 84-3403, R. C. M. 1947; amd. and redes. 3-3301 by Sec. 160, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment renumbered this section; inserted "Unless the context re-

quires otherwise, in this chapter" in the first paragraph; inserted "but is not limited to" in subdivision (2); deleted a definition of "commissioner"; added subdivision (3); and made minor changes in phraseology, punctuation and style.

**3-3302. Produce wholesalers' license.** A person may not engage in or purport to be engaged in the business of a dealer at wholesale unless he is licensed by the department of agriculture. This chapter does not apply to a farmer or gardener selling his own products, and who shall when called upon to do so by the department furnish a sworn statement that the goods handled by him were actually grown by him. Employees of the department may for the purpose of this section administer the oath. Also, this chapter does not apply to a trucker operating for hire under a license issued by the public service commission and not buying or selling produce, to a dealer at retail, or to a consumer or group of consumers co-operatively obtaining produce for their own use only and not for resale.

**History:** En. Sec. 2, Ch. 164, L. 1933; amd. Sec. 1, Ch. 173, L. 1935; Sec. 84-3402, R. C. M. 1947; amd. and redes. 3-3302 by Sec. 159, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment renumbered this section; substituted "department of agri-

culture" for "commissioner" in the first sentence; substituted "chapter" for "act" and "department" for "inspector" in the second sentence; substituted "Employees of the department" for "inspector" and "section" for "act" in the third sentence; added the fourth sentence; and made minor changes in phraseology and punctuation.

**3-3303. Application for license — contents — bond — expiration date — schedule of commissions and charges to be filed.** (1) Licenses to engage in the business of a dealer at wholesale in this state shall be issued by the department to reputable persons who apply for a license and pay the prescribed fee.

(2) The application shall be in writing, accompanied by the prescribed fee, and under oath. It shall state:

(a) the place where the applicant intends to carry on the business for which the license is desired;

(b) the estimated amount of business to be done monthly;

(c) the full names of the persons constituting the firm, if the applicant is a partnership;

(d) the names of the officers and the place of incorporation, if the applicant is a corporation; and

(e) a financial statement showing in a general way the value and character of the assets and the amount of liabilities of the applicant.

(3) Before issuing a license the department shall require the applicant to file with it a bond to the state in an amount to be fixed by the department based on the monthly business to be transacted by the applicant. The bond may not be for less than \$1,000. The department may require, under penalty of revoking the license, additional bond if the business transacted warrants an increase. The bond shall cover all wholesale produce business transacted in this state. The bond shall be executed by the applicant as principal and a surety company authorized to do business in the state as surety. The form of the bond shall be fixed by the department, conditioned upon:

(a) faithful performance of his duties as a dealer at wholesale;

(b) observance of all laws relating to the business of a dealer at wholesale;

(c) payment, when due, of the purchase price of produce purchased by him;

(d) the prompt reporting of sales as required by law to all persons consigning produce to the dealer as licensee for sale on commission; and

(e) the prompt payment to persons entitled to the proceeds of the sales less lawful charges, disbursements, and commissions.

(4) All licenses expire December 31 of each year. The license or a certified copy of the license shall be kept posted in the office of the licensee at each place in this state where he transacts business. The fee for each license is \$100 and for each certified copy of a license, \$1. If a truck is the place of business the license fee for the first truck is \$100 and for each additional truck \$50.

(5) The applicant shall file with the department a schedule of his commissions and charges for services in connection with produce handling on account of or as agent for another.

(6) A separate license is required for each place of business. Each truck used for assembling and distributing produce, other than from a permanently established place of business through which all business of sales and accounts is handled, is a separate place of business and must be licensed.

History: En. Sec. 4, Ch. 164, L. 1933; amd. Sec. 2, Ch. 173, L. 1935; Sec. 84-3404, R. C. M. 1947; amd. and redes. by Sec. 161, Ch. 218, L. 1974; amd. Sec. 24, Ch. 13, L. 1977.

#### Amendments

The 1974 amendment renumbered this section; substituted "department" for "commissioner" throughout; deleted "and comply with the conditions herein specified,

to wit" from the end of subsection (1); transferred the clause relating to separate licenses for each place of business from subsection (1) to subsection (6); and made minor changes in phraseology, punctuation and style.

The 1977 amendment substituted "partnership" for "copartnership" in subdivision, (2)(c); and made minor changes in phraseology, punctuation and style.



**3-3304. Investigation of applicant—hearings—grant or denial of license.** The department shall examine each application and investigate the applicant and his business, business rating, character, and reputation. If, from the examination and investigation, the department determines that the applicant is in the matter of his business, business rating, character, and reputation not properly qualified to engage in business as a dealer, it shall refuse to grant a license and shall deny the application, and notify the applicant in writing of its decision. An applicant whose application is denied by the department may, within ten (10) days after the mailing of notice of rejection, petition the department for a hearing. The department shall afford the applicant an opportunity for a hearing on a date not less than ten (10) nor more than twenty (20) days after the receipt of the petition. A person who has objected to the licensing of the applicant shall be given at least ten (10) days' notice of the hearing by mail. After the hearing, the department shall grant or deny the application.

**History:** En. Sec. 5, Ch. 164, L. 1933; Sec. 84-3405, R. C. M. 1947; amd. and redes. 3-3304 by Sec. 162, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment renumbered this section; substituted "department" for

"commissioner" throughout; deleted a sentence relating to the hearing of evidence and a sentence relating to findings of fact by the commissioner and the applicant's right of appeal; and made minor changes in phraseology, punctuation and style.

**3-3305. Records to be kept—contents.** (1) Every dealer in produce shall keep a complete record of all produce handled by him. The record shall include:

- (a) The name and address of the producer or shipper;
  - (b) The date of receipt of each consignment;
  - (c) The kind and quantity of produce received;
  - (d) The agreed purchase price or commission charged;
  - (e) Date of sale;
  - (f) Price at which sold;
  - (g) The name of the person, firm, or corporation to whom sold;
  - (h) An itemized statement of charges to be paid by the producer in connection with the sale;
- (i) The record shall be open for confidential inspection by the department.

**History:** En. Sec. 6, Ch. 164, L. 1933; Sec. 84-3406, R. C. M. 1947; amd. and redes. 3-3305 by Sec. 163, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment renumbered this

section; substituted "department" for "commissioner or his deputies" in subsection (1)(i); and made minor changes in phraseology, punctuation and style.

**3-3306. Inspection and report concerning produce.** When a dealer at wholesale, to whom produce has been shipped, is consigned for sale on a commission basis, or is on consignment, or has been shipped under any circumstances in which the title to the produce remains with the shipper, has received the produce, he shall within a reasonable time, make a written report to the shipper. The report shall include the exact time of arrival and the quantity and quality of the produce. If the produce is received in a decayed or damaged condition noticeable upon arrival, the

dealer shall have the common carrier or the department make proper record certifying the condition. The dealer shall notify the consignor promptly so that the consignor can take further action to verify the report.

**History:** En. Sec. 7, Ch. 164, L. 1933; Sec. 84-3407, R. C. M. 1947; amd. and redes. 3-3306 by Sec. 164, Ch. 218, L. 1974.

section; substituted "department" for "horticultural inspector of the state of Montana" in the third sentence; and made minor changes in phraseology.

#### **Amendments**

The 1974 amendment renumbered this

**3-3307. Enforcement of chapter—hearings.** (1) The department, upon its own motion may, or upon verified complaint against any dealer or any person, firm, exchange, association, or corporation assuming or attempting to act as such, shall make all investigations it considers necessary. The department shall have at all times free and unimpeded access to all buildings, yards, warehouses, storage, and transportation or any other facilities or places in which any produce is kept, stored, handled, or transported. If the department, upon investigation, believes that a dealer is not acting in accordance with this chapter, or if a verified complaint is filed against any dealer, the department shall have personal service made on the dealer or shall mail by registered mail a complaint or a copy of the verified complaint against the dealer. If dealer fails to make informal adjustment or settlement of the charges, to the satisfaction of the department, the department shall give notice of the time and place of a formal hearing. Notice of the hearing shall be given at least twenty (20) days before the hearing and the hearing shall be held in the city or town in which the transaction complained of is alleged to have occurred.

(2) At the hearing, copies of records, inspection certificates, certified reports, and all papers on file in the office of the department are prima facie evidence of the matters contained in them.

(3) After the hearing, the department shall dismiss the charges, suspend the license of the dealer for a specified period, revoke the licenses, or make any other appropriate order considered just and proper. The order shall specify its effective date and any order other than one suspending or revoking a license shall automatically suspend the license until the order is complied with.

**History:** En. Sec. 8, Ch. 164, L. 1933; Sec. 84-3408, R. C. M. 1947; amd. and redes. 3-3307 by Sec. 165, Ch. 218, L. 1974.

"commissioner" throughout; substituted "chapter" for "act" in subsection (1); deleted a sentence each in subsections (2) and (3) relating to the commissioner's powers and duties in conducting a hearing; and made minor changes in phraseology, punctuation and style.

#### **Amendments**

The 1974 amendment renumbered this section; substituted "department" for

**3-3308. Effect of appeal to district court.** If the revocation of the license of a produce dealer is appealed to a district court, the license remains in force until the final determination by the court. A license may not be refused during the time or on account of the pendency of any review proceedings.

**History:** En. Sec. 10, Ch. 164, L. 1933; Sec. 84-3410, R. C. M. 1947; amd. and redes. 3-3308 by Sec. 166, Ch. 218, L. 1974.

#### **Amendments**

The 1974 amendment renumbered and rewrote this section. For prior version, see section 84-3410 in bound Volume 5, part 2.

**3-3309. Rules for enforcement of chapter.** The department shall adopt rules for carrying out and enforcing this chapter.

**History:** En. Sec. 13, Ch. 164, L. 1933; Sec. 84-3413, R. C. M. 1947; amd. and redes. 3-3309 by Sec. 167, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment renumbered this section; substituted "department" for "commissioner" and "chapter" for "act"; and made minor changes in phraseology.

**3-3310. Co-operation with similar agencies.** The department shall co-operate with the United States department of agriculture and with other federal authorities, and with the state and municipal authorities of this and other states, and shall perform those other acts necessary in carrying out this chapter.

**History:** En. Sec. 14, Ch. 164, L. 1933; Sec. 84-3414, R. C. M. 1947; amd. and redes. 3-3310 by Sec. 168, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment renumbered this section; substituted "department" for "commissioner" and "chapter" for "act"; and made minor changes in phraseology.

**3-3311. Disposition of license fees.** All license fees received by the department under this chapter shall be paid into the state treasury and deposited in the general fund.

**History:** En. Sec. 11, Ch. 214, L. 1939; Sec. 84-3011, R. C. M. 1947; amd. and redes. 3-3211 by Sec. 154, Ch. 218, L. 1974; amd. Sec. 5, Ch. 155, L. 1975.

#### Amendments

The 1974 amendment renumbered this section; substituted "department" for "commissioner" after "received by the" in the first sentence; substituted "department" for "chief of said division" after "spent by the" in the first sentence; substituted "department" for "chief of the division of horticulture" in the former second sentence; substituted "chapter" for

"act" in two places; substituted "a revolving fund" for "the revolving fund of the division of horticulture" in the first sentence; and made minor changes in phraseology and punctuation.

The 1975 amendment substituted "deposited in the general fund" for "deposited in a revolving fund to be spent by the department upon approval of the state treasurer" at the end of the section; and deleted a former second sentence which read "All moneys so deposited shall be held for the department to use in carrying out this chapter."

**3-3312. Violation—penalty.**—A person who violates this chapter, fails to comply with rules adopted under this chapter, or fails to obey an order of the department made under this chapter is guilty of a misdemeanor and shall be fined not less than \$25 or more than \$500, imprisoned in the county jail for not more than 6 months, or both fined and imprisoned. The fine shall be paid into the state treasury and deposited as provided in 3-3311.

**History:** En. Sec. 18, Ch. 164, L. 1933; amd. Sec. 3, Ch. 173, L. 1935; 84-3416, R. C. M. 1947; amd. and redes. 3-3312 by Sec. 170, Ch. 218, L. 1974; amd. Sec. 25, Ch. 13, L. 1977.

#### Amendments

The 1974 amendment renumbered this section; substituted "chapter" for "act" in two places; substituted "as provided in section 3-3411" for "as provided in section

84-3415"; deleted the proviso "nothing in this act will apply to a consumer or group of consumers acting co-operatively in obtaining produce for their own use only and not for resale"; and made minor changes in phraseology and punctuation.

The 1977 amendment substituted "3-3311" at the end of the section for "section 3-3411"; and made minor changes in phraseology.



CHAPTER 34—APPLES, INSPECTION, GRADING AND PACKING

Section

- 3-3401. Inspection of apples packed for sale—procedure.
- 3-3402. Grades of apples.
- 3-3403. [Transferred from Title 90.]
- 3-3404. Designation of grade of bulk apples.
- 3-3405 to 3-3407. [Transferred from Title 90.]

**3-3401. Inspection of apples packed for sale—procedure.** (1) The department of agriculture shall inspect all apples packed for sale or shipment under this chapter.

(2) The department may:

(a) Certify to the grade and pack of apples packed for sale or shipped under this chapter and charge the owner, packer, or shipper a fee fixed by the department for these services.

(b) Adopt rules regarding inspection and certification of apples under this chapter.

**History:** En. Sec. 55, Ch. 216, L. 1921; re-en. Sec. 3630, R. C. M. 1921; Sec. 3-1305, R. C. M. 1947; amd. and redes. 3-3401 by Sec. 70, Ch. 218, L. 1974.

**Amendments**

The 1974 amendment renumbered this section; substituted “department” in both subsections for references to “commissioner of agriculture”; and made changes in style, punctuation and phraseology.

**3-3402. Grades of apples.** (1) The standard grades of apples for the state of Montana shall be:

(a) “extra fancy or first grade”, which shall consist of apples of one variety which are mature, hand-picked, clean, well formed, sound, free from bruises, limbrubs, spray burns, sunburn, russeting, drought spot, hail marks, visible water core, broken skin, apple scab, stings, and from diseases and insect injury, except that slight blemishes shall be permitted in this grade;

(b) “fancy or second grade”, which shall consist of apples of one variety which are mature, hand-picked, clean, fairly well formed, sound, free from visible water core, broken skin, and from damage caused by bruises, limbrub, spray burns, sunburn, russeting, drought spot, hail marks, apple scabs, diseases and insect injury;

(c) “C grade”, which shall consist of apples of one variety which are mature, hand-picked, clean, not badly misshapen, sound, free from broken skin and from serious damage caused by bruises, limbrub, russeting, drought spot, hail marks, apple scab, diseases, and insect injury and must have 15% of color requirements characteristic of the variety. The word “choice” must not be used in connection with this grade;

(d) “cull grade”, which shall consist of apples free from infection or disease or serious damage but which do not meet the requirements of “extra fancy or first grade”, “fancy or second grade”, or “C grade”. Such apples shall be marked “culls” in block letters not less than 1 inch in height on both ends of the box;

(e) “combination grade”. When “extra fancy or first grade” and “fancy or second grade” apples are packed together, the boxes must be

marked "combination extra fancy or first grade and fancy or second grade". This combination grade must contain at least 25% of apples which belong to the higher grade in the combination.

(f) "hail grade", which shall meet all requirements of "extra fancy" and "fancy grade" except for hail marks. Such hail marks must not materially deform or disfigure the fruit or affect more than one-tenth of the surface in the aggregate where skin has not been broken. Unhealed hail marks shall not be permitted and not more than an aggregate area of  $\frac{1}{2}$  inch shall be allowed for well-healed hail marks where the skin has been broken.

(g) "orchard-run grade", which shall consist of apples of one variety, which are mature, hand-picked, clean, sound, free from infection or disease or serious damage, and must have 15% color requirements characteristic of the variety and shall be marked "orchard-run grade" in block letters not less than 1 inch in height on both ends of the box.

(2) No apples smaller than  $2\frac{1}{4}$  inches in diameter shall be permitted in any grade. Small apples which are under size requirements as prescribed may be shipped if marked "small" in block letters not less than 1 inch in height on both ends of the box, provided such apples are free from insect pests and diseases.

(3) In order to provide for variations incident to commercial grading and handling a tolerance of 10% for a total of all defects from the standard of the grade shall be allowed.

**History:** En. Sec. 1, Ch. 138, L. 1931; amd. Sec. 1, Ch. 1, L. 1933; amd. Sec. 1, Ch. 39, L. 1935; amd. Sec. 1, Ch. 89, L. 1939; amd. Sec. 1, Ch. 43, L. 1951; amd. Sec. 1, Ch. 127, L. 1971; Sec. 90-201, R. C. M. 1947; redes. 3-3402 by Sec. 172, Ch. 218, L. 1974; amd. Sec. 26, Ch. 13, L. 1977.

#### Amendments

The 1977 amendment inserted the subsection (1) designation; deleted "Extra

fancy or first grade,' 'Fancy or second grade,' 'C,' 'Combination grade,' and 'Hail grade,' and 'Orchard-run grade'" after "shall be" in the initial paragraph of subsection (1); substituted "Cull grade" which" at the beginning of subdivision (1)(d) for "Cull apples"; redesignated former subdivisions (h) and (i) as subsections (2) and (3); and made minor changes in phraseology, punctuation and style.

### 3-3403. [Transferred from Title 90.]

#### Compiler's Notes

This section was originally numbered 90-202. Section 172, Ch. 218, Laws of 1974 renumbered it to appear in this title. Be-

cause there has been no change in text, the section is not reprinted here but may be found in bound Volume 6, part 1, as sec. 90-202.

**3-3404. Designation of grade of bulk apples.** Apples shipped or sold in bulk shall have two cards at least ten by twelve inches (10" x 12") in size attached to the doors of the car, or on each side of truck in which they are moved. The cards shall designate the grade of the apples contained in the car or truck as specified in section 3-3402 and shall be in legible printed letters at least two inches in height.

**History:** En. Sec. 3, Ch. 138, L. 1931; amd. Sec. 2, Ch. 39, L. 1935; Sec. 90-203, R. C. M. 1947; amd. and redes. 3-3404 by Sec. 171, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment renumbered this section; substituted "as specified in section 3-3402" for "as specified in section 90-201"; and made minor changes in phraseology.

**3-3405 to 3-3407. [Transferred from Title 90.]****Compiler's Notes**

These sections were originally numbered 90-203 to 90-206. Section 172, Ch. 218, Laws of 1974 renumbered them to appear in this title. Because there has been no change in text, the sections are not reprinted here but may be found in bound Volume 6, part 1, as secs. 90-203 to 90-206.

**Repealing Clause**

Section 173 of Ch. 218, Laws 1974 read "Sections 3-101 through 3-106, 3-108, 3-109, 3-109.1, 3-110, 3-110.1, 3-111, 3-112, 3-115,

3-118, 3-120 through 3-122; 3-204, 3-304, 3-401 through 3-420, 3-501 through 3-511, 3-601 through 3-610, 3-701, 3-812, 3-815, 3-901 through 3-906, 3-1101, 3-1102, 3-1105, 3-1208, 3-1217, 3-1502 through 3-1509, 3-1601 through 3-1603, 3-1712, 3-1713, 3-1733, 3-1910, 3-1911, 3-2101 through 3-2109, 3-2901, 3-2903, 3-2905, 3-2907, 3-2910, 3-2912, 3-2914, 3-2918, 14-418, 80-501 through 80-505, 82-804.1, 82-804.4, 82-2901 through 82-2903, 82A-302, 82A-303, 82A-305, 84-3401, 84-3409, 84-3411, and 84-3412 are repealed."

**CHAPTER 35—CROPLAND SPRAYING PROGRAM****Section**

- 3-3501. Definitions.
- 3-3502. Insect detection surveillance and control programs.
- 3-3503. Duties of department.
- 3-3504. Financing of control program.
- 3-3505. Computation and collection of assessments on landowners.
- 3-3506. Rangeland control programs.
- 3-3507. Administrative procedures.

**3-3501. Definitions.** As used in this chapter the following definitions apply:

(1) "Cropland" means land used for the production of food and forage including the headlands, ditches, and rights-of-way adjacent to such land.

(2) "Cropland spraying program" means the application of chemical or other substances to croplands for the purpose of preventing or destroying insect pests.

(3) "Insect pest" includes the grasshopper, cutworm, pale western cutworm, army worm, chinch bug, and any other insect or arthropod generally recognized as a destroyer of grain, hay, range, and horticulture crops.

(4) "Infestation" means that a pest exists in such numbers, under certain conditions, and at certain times as to destroy or substantially damage or threaten to destroy livestock or other agricultural crops.

(5) "Department" means the department of agriculture.

(6) "Alternative control program" means a system of controlling insect pest populations through biological or other means not involving toxic chemicals.

(7) "Emergency" means a serious insect pest infestation that meets the conditions of 79-2501.

**History:** En. 3-3501 by Sec. 1, Ch. 433, L. 1975; amd. Sec. 27, Ch. 13, L. 1977; amd. Sec. 1, Ch. 362, L. 1977.

**Compiler's Notes**

This section was amended twice in 1977, once by Ch. 13 and once by Ch. 362. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

**Title of Act**

An act authorizing the department of agriculture to administer, supervise, and coordinate cropland spraying programs for insect pest control; authorizing the department to share costs of cooperative rangeland spraying programs; revising the powers of counties to operate insect pest control programs; increasing the permissible levy for such programs; amending sections 16-1149 through 16-1153, R. C. M.



1947; and providing an immediate effective date.

#### Amendments

Chapter 13, Laws of 1977, inserted subdivision (3) defining "insect pest"; redesignated former subdivisions (3) through (5) as subdivisions (4) through (6); deleted "as defined in section 16-1153" after "condition where an insect pest" near the beginning of subdivision (4); and made minor changes in phraseology and punctuation.

Chapter 362, Laws of 1977, inserted "preventing or" near the end of subdivi-

sion (2); inserted subdivision (3); redesignated subdivisions (3) through (5) as subdivisions (4) to (6); rewrote subdivision (4) which read: "Condition of insect pest infestation" means a condition where an insect pest, as defined in section 16-1153, or combination of such pests, exists in cropland in such numbers and at such times as to destroy or substantially damage, or threaten to destroy or substantially damage, a significant part of the crop production in a county"; added subdivision (7); and made minor changes in phraseology and punctuation.

**3-3502. Insect detection surveillance and control programs.** The department may:

(1) employ permanent and seasonal personnel to administer this chapter;

(2) survey for and maintain surveillance of insect pests during appropriate seasons and enter upon any croplands in the course of conducting such surveillance;

(3) provide insect pest management services to particular agricultural commodity groups for the resolution of special or unusual insect pest problems;

(4) determine or assist a county to determine, upon investigation, whether a serious infestation exists or threatens to occur within a county;

(5) declare that an insect pest infestation constitutes a serious infestation;

(6) operate, contract for, or assist a county to obtain spraying or other appropriate services to counteract an actual or threatening serious infestation, having first determined that any person contracting to supply such services is properly equipped to apply substances designated and approved by the department;

(7) conduct, cooperate in, or coordinate upon request by any affected county, insect pest management services for serious pest infestations in one or more counties;

(8) assist counties, upon request, to coordinate county insect pest management program in contiguous counties.

**History:** En. 3-3502 by Sec. 2, Ch. 433, L. 1975; amd. Sec. 2, Ch. 362, L. 1977.

#### Amendments

The 1977 amendment substituted "survey for and maintain surveillance of insect pests" in subdivision (2) for "survey

pest infestation conditions"; inserted subdivision (3); redesignated former subdivision (3) as subdivision (4); inserted subdivision (5); redesignated former subdivisions (4) and (5) as subdivisions (6) and (7); added subdivision (8); and made minor changes in phraseology.

**3-3503. Duties of department.** The department shall:

(1) develop and publish a list of pesticides approved for control of insect pests;

(2) develop and publish technical guidelines on techniques of controlling insect pests;

(3) notify a county of its survey results and state whether the infestation is normal or serious;

(4) review and comment on or review and approve all county agricultural insect pest management plans as provided by local government statutes, and consider whether the plan conforms to the technical guidelines of the department and whether implementation of the plan will probably counteract the condition of insect pest infestation in a timely and proper manner;

(5) consider whether an alternative control program would be as efficient as spraying on a ratio of total costs to total benefits and provide the county with a summary of its findings prior to conducting or approving any cropland spraying program. If the alternative control program is considered adequate, the department may conduct or approve such a program.

**History:** En. 3-3503 by Sec. 3, Ch. 433, L. 1975; amd. Sec. 3, Ch. 362, L. 1977.

#### Amendments

The 1977 amendment substituted "pesticides approved for control of insect pests" in subdivision (1) for "substances approved for all cropland spraying programs, which shall be the least harmful to beneficial insects among effective available substances"; substituted "on techniques of controlling insect pests" in subdivision (2) for "for county-conducted cropland spraying programs"; substituted subdivisions (3) and (4) for former subdivisions (3) through (5) which read: "(3) publish, upon finding that a condition of insect pest infestation exists within a county, notice of intent to conduct a cropland spraying program within that county,

such notice to appear in a newspaper generally circulating in the county; (4) conduct a cropland spraying program within a county, after notice of intent has been published, unless within two weeks or such lesser time as the notice may specify, the board of county commissioners adopts a plan to conduct a cropland spraying program which is approved by the department; (5) approve a county plan to conduct a cropland spraying program which is submitted in a timely manner, which conforms to the technical guidelines of the department, and which will counteract a condition of insect pest infestation in a timely manner"; redesignated former subdivision (6) as subdivision (5); and made minor changes in phraseology.

**3-3504. Financing of control program.** (1) One-third of the costs of a cropland spraying program or alternative program conducted by the state shall be paid by the state. Prior to the implementation of any state or county control program, the department and the governing body of any county for which the program is proposed shall enter into an interlocal or management agreement on the maximum amount of moneys each shall appropriate or provide toward the proposed program. If either party does not sign and approve the agreement, the program may not be conducted.

(2) Individual farm and ranch landowners may formally petition by written affidavit protesting their inclusion within the proposed cropland spraying program. The department or local governing body shall refrain from spraying any land petitioned to be excluded. Such excluded land remains subject to assessment under section 3-3505. The governing body of any county for which a control program is intended shall proceed as provided by local government statutes.

(3) If the department conducts the program, it shall pay all costs of the program. The county shall pay its share and the landowner's share to the department for deposit in the appropriate fund as provided in 3-3505.

(4) If the county conducts the program, it shall pay all costs of the program including its share. The department shall pay one-third of the costs of the cropland spraying program from monies appropriated for that purpose to the county in which the program was conducted. The county treasurer shall collect the landowner's special assessment as provided in 3-3505.

**History:** En. 3-3504 by Sec. 4, Ch. 433, L. 1975; amd. Sec. 4, Ch. 362, L. 1977.

#### Amendments

The 1977 amendment inserted "or alternative program conducted by the state" in subsection (1); deleted "one-third ( $\frac{1}{3}$ )" to the county where the program is conducted, and one-third ( $\frac{1}{3}$ ) to the owners of the cropland in the county" at the end of the first sentence of subsection (1); substituted "control program" for "cropland spraying program" in the second sentence of subsection (1); substituted "governing body" in the second sentence of subsection (1) for "board of county com-

missioners"; substituted "an interlocal or management agreement" in the second sentence of subsection (1) for "a written agreement"; deleted the first paragraph of subsection (2) which created an insect evaluation committee and provided for it to review department findings and hold public hearings; substituted "local governing body" in the second sentence of subsection (2) for "county commissioners"; added the last sentence of subsection (2); substituted "landowner's special assessment" in the last sentence of subsection (4) for "landowners' assessments"; and made minor changes in phraseology and punctuation.

**3-3505. Computation and collection of assessments on landowners.** Each owner of cropland benefited under a cropland spraying program is liable for such portion of the landowner's share of the program costs as his cropland is a portion of all cropland within the boundaries of the program. The county treasurer shall compute each landowner's liability and mail a special assessment therefor to each owner or occupier of land within the boundaries of the program. Unless otherwise mutually agreed upon, this assessment is due and payable within 32 days of mailing or 30 days of receipt if receipt is shown to be more than 2 days after mailing. A delinquent assessment is a lien upon the land assessed.

**History:** En. 3-3505 by Sec. 5, Ch. 433, L. 1975; amd. Sec. 5, Ch. 362, L. 1977.

#### Amendments

The 1977 amendment substituted "boundaries of the program" at the end of the first sentence for "county benefited by the program"; substituted "owner or

occupier of land within the boundaries of the program" at the end of the second sentence for "landowner or his agent"; inserted "Unless otherwise mutually agreed upon" at the beginning of the third sentence; and made minor changes in phraseology, punctuation and style.

**3-3506. Rangeland control programs.** The department may enter into agreements with the United States department of agriculture for cooperative programs to control insect pest infestations on rangeland and to share the costs of such programs whenever funds have been appropriated and are available for that purpose.

**History:** En. 3-3506 by Sec. 6, Ch. 433, L. 1975; amd. Sec. 6, Ch. 362, L. 1977.

#### Amendments

The 1977 amendment made minor changes in phraseology and punctuation.

**3-3507. Administrative procedures.** The department may adopt rules necessary to carry out the intent of the act.

**History:** En. 3-3507 by Sec. 7, Ch. 362, L. 1977.



## TITLE 4—ALCOHOLIC BEVERAGE CODE

### Chapter

1. Authority of department of revenue, 4-1-101 to 4-1-408.
2. State liquor stores, 4-2-101 to 4-2-205.
3. Control of liquor, wine and beer, 4-3-102 to 4-3-308.
4. License administration, 4-4-101 to 4-4-407.
5. Identification cards, 4-5-101 to 4-5-105.
6. Enforcement, 4-6-101 to 4-6-404.

### CHAPTER 1—AUTHORITY OF DEPARTMENT OF REVENUE

#### Section

- 4-1-101. Citation—declaration of policy—subject matters of regulation.
- 4-1-102. Declaration of policy—as to sale of beer.
- 4-1-103. Declaration of policy as to retail sale of liquor.
- 4-1-104. Intent and construction of code.
- 4-1-105. Divisions of code.
- 4-1-106. Saving clause—scope of code.
- 4-1-107. Definitions.
- 4-1-201. Sale of liquor, possession of liquor, when unlawful.
- 4-1-202. Application of code.
- 4-1-203. Preparations not subject to code.
- 4-1-204. Health professions exemption.
- 4-1-205. Licensed hospital or health care facility—restrictions—violations.
- 4-1-206. Local option.
- 4-1-301. General powers and duties of the department.
- 4-1-302. Functions, powers and duties of department of revenue.
- 4-1-303. Regulations may be made by department of revenue—scope of regulations.
- 4-1-304. Prohibited acts within division.
- 4-1-306. Property and moneys acquired belong to state—expenses of administration, how paid.
- 4-1-401. License tax on liquor—amount—distribution of proceeds.
- 4-1-403. Excise liquor tax—collection.
- 4-1-404. Tax on imported beer—computation in case of barrels of capacity other than thirty-one gallons.
- 4-1-405. Barrelage tax on beer.
- 4-1-406. Disposition of money received.
- 4-1-407. Revenue to be paid to state treasurer—disposition of revenue.
- 4-1-408. Revenue allocation.

#### 4-101. [Transferred.]

##### Compiler's Notes

Section 1, Ch. 387, Laws of 1975 renumbered this section as sec. 4-1-101.

#### 4-102. (2815.61) Repealed.

##### Repeal

Section 4-102 (Sec. 2, Ch. 105, L. 1933; Sec. 1, Ch. 209, L. 1949; Sec. 2, Ch. 154,

L. 1965), relating to definitions, was repealed by Sec. 121, Ch. 387, Laws 1975.

#### 4-103. [Transferred.]

##### Compiler's Notes

Section 2, Ch. 387, Laws of 1975 renumbered this section as sec. 4-1-105.

**4-104 to 4-106. (2815.63) Repealed.****Repeal**

Sections 4-104 to 4-106 (Sec. 4, Ch. 105, L. 1933; Sec. 1, Ch. 30, L. 1937; Sec. 1, Ch. 243, L. 1947; Sec. 1, Ch. 140, L. 1949; Sec. 1, Ch. 183, L. 1951; Sec. 1, Ch. 235,

L. 1957; Sec. 1, Ch. 268, L. 1963; Sec. 11, Ch. 177, L. 1965), relating to creation of the liquor control board, its members, and the state liquor administrator, were repealed by Sec. 121, Ch. 387, Laws 1975.

**4-107. [Transferred.]****Compiler's Notes**

Section 3, Ch. 387, Laws of 1975 renumbered this section as sec. 4-1-301.

**4-108. (2815.63) Repealed.****Repeal**

Section 4-108 (Sec. 4, Ch. 105, L. 1933; Sec. 1, Ch. 30, L. 1937; Sec. 1, Ch. 243, L. 1947; Sec. 1, Ch. 140, L. 1949; Sec. 1, Ch. 183, L. 1951; Sec. 2, Ch. 235, L. 1957;

Sec. 2, Ch. 151, L. 1963; Sec. 1, Ch. 265, L. 1967; Sec. 1, Ch. 376, L. 1971), relating to salaries of the state liquor administrator and his employees, was repealed by Sec. 1, Ch. 42, Laws 1973.

**4-109. [Transferred.]****Compiler's Notes**

Section 4, Ch. 387, Laws of 1975 renumbered this section as sec. 4-1-307.

**4-110, 4-111. (2815.65, 2815.66) Repealed.****Repeal**

Sections 4-110, 4-111 (Secs. 6, 7, Ch. 105, L. 1933; Secs. 2, 3, Ch. 30, L. 1937; Sec. 12, Ch. 177, L. 1965), relating to the oath

and term of office of the state liquor administrator, were repealed by Sec. 121, Ch. 387, Laws 1975.

**4-112, 4-113. [Transferred.]****Compiler's Notes**

Section 5, Ch. 387, Laws of 1975 renum-

bered these sections as secs. 4-1-302 and 4-1-303.

**4-114. [Transferred.]****Compiler's Notes**

Section 7, Ch. 387, Laws of 1975 renumbered this section as sec. 4-2-101.

**4-114.1, 4-114.2. [Transferred.]****Compiler's Notes**

Section 120, Ch. 387, Laws of 1975 re-

numbered these sections as secs. 4-2-202, 4-2-203.

**4-115. (2815.70) Repealed.****Repeal**

Section 4-115 (Sec. 11, Ch. 105, L. 1933), relating to the appointment and duties of

vendors, was repealed by Sec. 121, Ch. 387, Laws 1975.

**4-116. [Transferred.]****Compiler's Notes**

Section 8, Ch. 387, Laws of 1975 renumbered this section as sec. 4-2-106.

**4-117. [Transferred.]**

**Compiler's Notes**

Section 9, Ch. 387, Laws of 1975 renumbered this section as sec. 4-2-201.

**4-118. (2815.72) Repealed.**

**Repeal**

Section 4-118 (Sec. 13, Ch. 105, L. 1933), relating to sales by vendors on a physi-

cian's prescription, was repealed by Sec. 121, Ch. 387, Laws 1975.

**4-119. [Transferred.]**

**Compiler's Notes**

Section 120, Ch. 387, Laws of 1975 renumbered this section as sec. 4-2-102.

**4-120. [Transferred.]**

**Compiler's Notes**

Section 10, Ch. 387, Laws of 1975 renumbered this section as sec. 4-2-107.

**4-121. [Transferred.]**

**Compiler's Notes**

Section 11, Ch. 387, Laws of 1975 renumbered this section as sec. 4-2-104.

**4-122. [Transferred.]**

**Compiler's Notes**

Section 12, Ch. 387, Laws of 1975 renumbered this section as sec. 4-2-103.

**4-133. (2815.87) Repealed.**

**Repeal**

Section 4-133 (En. Sec. 28, Ch. 105, L. 1933), relating to beer licenses for clubs

of certain kinds, was repealed by Sec. 1, Ch. 81, Laws 1974.

**4-134 to 4-138. (2815.88 to 2815.92) Repealed.**

**Repeal**

Sections 4-134 to 4-138 (Secs. 29 to 33, Ch. 105, L. 1933; Secs. 5 to 8, Ch. 154, L. 1965), relating to the allowance of liquor

to druggists, physicians, dentists, and veterinarians, were repealed by Sec. 121, Ch. 387, Laws 1975.

**4-139. [Transferred.]**

**Compiler's Notes**

Section 13, Ch. 387, Laws of 1975 renumbered this section as sec. 4-1-205.

**4-140. [Transferred.]**

**Compiler's Notes**

Section 14, Ch. 387, Laws of 1975 renumbered this section as sec. 4-1-202.



**4-141. [Transferred.]****Compiler's Notes**

Section 15, Ch. 387, Laws of 1975 renumbered this section as sec. 4-1-203.

**4-142 to 4-149. (2815.96 to 2815.103) Repealed.****Repeal**

Sections 4-142 to 4-149 (Secs. 37 to 44, Ch. 105, L. 1933), relating to local option

elections, were repealed by Sec. 121, Ch. 387, Laws 1975.

**4-150. [Transferred.]****Compiler's Notes**

Section 16, Ch. 387, Laws of 1975 renumbered this section as sec. 4-1-201.

**4-151. [Transferred.]****Compiler's Notes**

Section 120, Ch. 387, Laws of 1975 renumbered this section as sec. 4-3-101.

**4-152. [Transferred.]****Compiler's Notes**

Section 17, Ch. 387, Laws of 1975 renumbered this section as sec. 4-2-105.

**4-153. [Transferred.]****Compiler's Notes**

Section 18, Ch. 387, Laws of 1975 renumbered this section as sec. 4-1-304.

**4-154. [Transferred.]****Compiler's Notes**

Section 21, Ch. 387, Laws of 1975 renumbered this section as sec. 4-3-102.

**4-156. [Transferred.]****Compiler's Notes**

Section 20, Ch. 387, Laws of 1975 renumbered this section as sec. 4-6-106.

**4-158. [Transferred.]****Compiler's Notes**

Section 19, Ch. 387, Laws of 1975 renumbered this section as sec. 4-6-101.

**4-159. (2815.113) Repealed.****Repeal**

Section 4-159 (Sec. 54, Ch. 105, L. 1933; Sec. 10, Ch. 154, L. 1965), relating to con-

sumption of liquor or intoxication in a public place, was repealed by Sec. 121, Ch. 387, Laws 1975.

**4-160, 4-161. [Transferred.]**

**Compiler's Notes**

Sections 23 and 24, Ch. 387, Laws of

1975 renumbered these sections as secs. 4-6-103, 4-6-104.

**4-163. (2815.117) Repealed.**

**Repeal**

Section 4-163 (Sec. 58, Ch. 105, L. 1933), relating to procuring liquor for interdicted

persons, was repealed by Sec. 121, Ch. 387, Laws 1975.

**4-164. (2815.118) Repealed.**

**Repeal**

Section 4-164 (Sec. 59, Ch. 105, L. 1933; Sec. 11, Ch. 154, L. 1965), relating to

presence of interdicted persons on liquor store or beer licensee's premises, was repealed by Sec. 20, Ch. 302, Laws of 1974.

**4-167. (2815.121) Repealed.**

**Repeal**

Section 4-167 (Sec. 62, Ch. 105, L. 1933),

relating to drunkenness, was repealed by Sec. 121, Ch. 387, Laws 1975.

**4-169, 4-170. [Transferred.]**

**Compiler's Notes**

Section 120, Ch. 387, Laws of 1975 re-

numbered these sections as 4-3-105 and 4-3-103, respectively.

**4-171. (2815.125) Repealed.**

**Repeal**

Section 4-171 (Sec. 66, Ch. 105, L. 1933), relating to prohibition against sale of

material branded as liquor, was repealed by Sec. 1, Ch. 45, Laws 1974.

**4-172. [Transferred.]**

**Compiler's Notes**

Section 120, Ch. 387, Laws of 1975 renumbered this section as sec. 4-6-105.

**4-173. Repealed.**

**Repeal**

Section 4-173 (Sec. 2, Ch. 200, L. 1959), relating to violation of the liquor control

act, penalty, and nuisance abatement, was repealed by Sec. 121, Ch. 387, Laws 1975.

**4-1-101. (2815.60) Citation—declaration of policy—subject matters of regulation.** This title may be cited as the "Montana Alcoholic Beverage Code." It is hereby declared to be the policy of the state of Montana to effectuate and ensure the entire control of the manufacture, sale and distribution of liquor within the state of Montana as that term is defined in this code subject to the authority of the state of Montana through the Montana department of revenue.

This code is an exercise of the police power of the state, in, and for the protection, of the welfare, health, peace, morals and safety of the people of the state and their provisions shall be construed for the accomplishment of such purposes.

**History:** En. Sec. 1, Ch. 105, L. 1933; R. C. M. 1947; amd. and redes. 4-1-101 by amd. Sec. 1, Ch. 165, L. 1951; Sec. 4-101, Sec. 1, Ch. 387, L. 1975.

**Amendments**

The 1975 amendment renumbered this section; changed the official citation of the act from "State Liquor Control Act of Montana" to "Montana Alcoholic Beverage Code"; changed the controlling au-

thority from the liquor control board to the Montana department of revenue; deleted definitions of beer and liquors; and completely rewrote the entire section. For former text, see sec. 4-101 in parent volume.

**4-1-102. (2815.10) Declaration of policy—**as to sale of beer. It is hereby declared to be the policy of the state of Montana that the manufacture, transportation, distribution, sale and possession of "beer," as that term is hereinafter defined in this code and which contains not more than seven per centum (7%) of alcohol by weight, shall be controlled and regulated as provided under this code. Beer, porter, ale, stout and malt liquors containing more than seven per centum (7%) of alcohol by weight and which are defined as "liquor" shall be subject to the regulations and controls provided for liquor.

**History:** En. Sec. 1, Ch. 106, L. 1933; amd. Sec. 1, Ch. 166, L. 1951; Sec. 4-301, R. C. M. 1947; amd. and redes. 4-1-102 by Sec. 45, Ch. 387, L. 1975.

**Amendments**

The 1975 amendment renumbered this section; increased the allowable alcoholic content of beer from 4% to 7% and rewrote the entire section. For former text, see sec. 4-301 in parent volume.

**4-1-103. Declaration of policy as to retail sale of liquor.** It is hereby declared as the policy of the state that it is necessary to further regulate and control the sale and distribution within the state of alcoholic beverages, and to eliminate certain illegal traffic in liquor now existing, and to ensure the entire control of the sale of liquor in the Montana department of revenue, it is advisable and necessary, in addition to the operation of the state liquor stores now provided by law, that the said department be empowered and authorized to grant licenses to persons qualified under this code, to sell liquor purchased by them at state liquor stores at retail posted price in accordance with this code and under rules and regulations promulgated by the said department, and under its strict supervision and control, and to provide severe penalty for the sale of liquor except by and in state liquor stores and by persons licensed under this code. The restrictions, regulations and provisions contained in this code are enacted by the legislature for the protection, health, welfare and safety of the people of the state.

**History:** En. Preamble, Ch. 84, L. 1937; Sec. 4-401, R. C. M. 1947; amd. and redes. 4-1-103 by Sec. 78, Ch. 387, L. 1975.

section; changed the control of liquor sales from the liquor control board to the Montana department of revenue; and made minor changes in phraseology.

**Amendments**

The 1975 amendment renumbered this

**4-1-104. (2815.159) Intent and construction of code.** The purpose and intent of this code are to prohibit transactions in liquor which take place wholly within the state of Montana except under state control as specifically provided by this code, and every section and provision of this code shall be construed accordingly. The provisions of this code dealing with the importation, sale and disposition of liquor within the state through the instrumentality of a department and otherwise provide the means by which such state control shall be made effective, and nothing in



this code shall be construed as forbidding, affecting or regulating any transaction which is not subject to the legislative authority of the state.

**History:** En. Sec. 99, Ch. 105, L. 1933;  
Sec. 4-233, R. C. M. 1947; amd. and redes.  
4-1-104 by Sec. 42, Ch. 387, L. 1975.

**Amendments**

The 1975 amendment renumbered this section; and made minor changes in phraseology.

**4-1-105. (2815.62) Divisions of code.** This code is divided into six chapters. Chapter 1 relates to the authority of the department of revenue to administer this act and the powers and functions of the department. Chapter 2 relates to the establishment of state stores and the keeping and selling of liquors. Chapter 3 relates to the control of liquor, wine, and beer. Chapter 4 relates to license administration. Chapter 5 relates to identification cards. Chapter 6 relates to enforcement.

**History:** En. Sec. 3, Ch. 105, L. 1933;  
Sec. 4-103, R. C. M. 1947; amd. and redes.  
4-1-105 by Sec. 2, Ch. 387, L. 1975.

**Amendments**

The 1975 amendment renumbered this section; substituted "control of liquor, wine, and beer" for "formation of local option areas and the holding of elections therein" in the fourth sentence; substituted "license administration" for "pro-

hibitions, interdiction, penalties and procedure on prosecution and on appeal" in the fifth sentence; substituted "identification cards" for "property acquired by the board and the financing and accounting by the board and application of the profits" in the sixth sentence; substituted "enforcement" for "general and miscellaneous matters" in the seventh sentence; and made minor changes in phraseology.

**4-1-106. Saving clause—scope of code.** If any clause, sentence, paragraph, section or any part of this code shall be declared and adjudged to be invalid and/or unconstitutional, such invalidity or unconstitutionality shall not affect, impair, invalidate or nullify the remainder of this code. This code shall apply to the Montana department of revenue as now composed and existing, and to any board or commission or other entity which may hereafter succeed the department.

**History:** En. Sec. 39, Ch. 84, L. 1937;  
Sec. 4-440, R. C. M. 1947; amd. and redes.  
4-1-106 by Sec. 105, Ch. 387, L. 1975.

**Amendments**

The 1975 amendment renumbered this

section; substituted "department of revenue" for "liquor control board" in the second sentence; inserted "or other entity" near the end of the second sentence; and made minor changes in phraseology.

**4-1-107. Definitions.** As used in this code:

(1) "Agency agreement" means an agreement between the department and a person appointed to sell liquor as a commission merchant, rather than as an employee.

(2) "Alcohol" means ethyl alcohol, also called ethanol or the hydrated oxide of ethyl.

(3) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than one-half of one per cent (0.5%) of alcohol by volume.

(4) "Beer" means a malt beverage containing not more than seven per cent (7%) of alcohol by weight.

(5) "Brewer" means a person who produces malt beverages.

- (6) "Department" means the Montana department of revenue.
- (7) "Immediate family" means a spouse, dependent children, or dependent parents.
- (8) "Industrial use" means a use described as industrial use by the Federal Alcohol Administration Act and the federal rules and regulations of 27 CFR.
- (9) "Liquor" means an alcoholic beverage except beer.
- (10) "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts, or their products, and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without other wholesome products suitable for human food consumption.
- (11) "Package" means a container or receptacle used for holding an alcoholic beverage.
- (12) "Proof gallon" means a U. S. gallon of liquor at sixty degrees on the Fahrenheit scale that contains fifty per cent (50%) of alcohol by volume.
- (13) "Public place" means a place, building, or conveyance to which the public has or may be permitted to have access and any place of public resort.
- (14) "Residence" means a building, part of a building, or tent where a person resides, but does not include any part of a building that is not actually and exclusively used as a private residence.
- (15) "Rules and regulations" means rules and regulations published by the department pursuant to this act.
- (16) "State liquor facility" means a facility owned or under control of the department for the purpose of receiving, storing, transporting, or selling alcoholic beverages.
- (17) "State liquor store" means a retail store operated by the department in accordance with this code for the purpose of selling distilled spirits and wines.
- (18) "Storage depot" means a building or structure owned or operated by a brewer at any point in the state of Montana, off and away from the premises of a brewery, and which structure is equipped with refrigeration or cooling apparatus for the storage of beer, and from which a brewer may sell or distribute beer as permitted by this code.
- (19) "Warehouse" means a building or structure owned or operated by a licensed wholesaler for the receiving, storage and distribution of beer as permitted by this code.
- (20) "Wine" means an alcoholic beverage made from the normal alcoholic fermentation of the juice of sound, ripe, fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging and that contains not less than seven per cent (7%) nor more than twenty-four per cent (24%) of alcohol by volume. Wine may be ameliorated to correct natural deficiency.

cies, sweetened and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined as above but made in the manner of wine, labeled and sold as wine in accordance with federal regulations are also wine.

**History:** En. 4-1-107 by Sec. 110, Ch. 387, L. 1975.

**Title of Act**  
An act to recodify and generally revise the alcoholic beverage control laws.

**4-1-201. (2815.104) Sale of liquor, possession of liquor, when unlawful.** (1) Except as provided by this code, no person shall, within the state, by himself, his clerk, servant, or agent, expose or keep for sale, or directly or indirectly or upon any pretense, or upon any device, sell, or offer to sell, or in consideration of the purchase or transfer of any property, or for any other consideration, or at the time of the transfer of any property, give to any other person any liquor.

(2) No person shall have or keep any liquor within the state which has not been purchased from the state of Montana; provided, however, that nothing in this code shall prohibit any person entering this state from any other state, or from any foreign country, from having in his possession not to exceed three (3) wine gallons of alcoholic liquor or beer, which liquor or beer shall have been purchased in another state or foreign country but no person claiming to have so entered the state, shall at any time, have in his possession more than three (3) wine gallons of intoxicating liquor which shall not have been purchased from a state liquor store. This subsection shall not apply to the department or to the keeping or having of liquor by brewers, distillers and other persons duly licensed by the United States for the manufacture of such liquor; nor to the keeping or having of any proprietary or patent medicines or of any extracts, essences, tinctures or preparations where such having and keeping is authorized by this code.

(3) Nothing contained in this section shall apply to the possession by a sheriff or his bailiff of liquor seized under execution or other judicial or extra-judicial process nor to sales under executions or other judicial or extra-judicial process to the department, or in the case of beer to a brewer, beer licensee, club licensee or canteen licensee.

**History:** En. Sec. 45, Ch. 105, L. 1933; amd. Sec. 1, Ch. 166, L. 1935; amd. Sec. 1, Ch. 66, L. 1957; Sec. 4-150, R. C. M. 1947; amd. and redes. 4-1-201 by Sec. 16, Ch. 387, L. 1975.

#### Amendments

The 1975 amendment renumbered this section; substituted "code" for "act" throughout the section; deleted a former subsection (2) which read "No person shall have, keep or sell any beer, or malt liquor, to which has been added any foreign sub-

stance"; redesignated subsections (3) and (4) as (2) and (3); increased the maximum quantity of liquor which may be brought into the state from one gallon to three gallons; substituted "purchased from the state of Montana" near the beginning of subsection (2) for "purchased from a state vendor of the Montana liquor control board or from a druggist authorized to sell the same"; inserted "or beer" after "liquor" in two places in the middle of subsection (2); and made minor changes in phraseology.

**4-1-202. (2815.94) Application of code.** (1) Nothing in this code shall prevent any brewer, distiller, or other person duly licensed, under the provisions of any statute of the United States of America, for the



manufacture of liquor, from having or keeping liquor in a place and in the manner authorized by or under any such statute.

It is hereby declared to be the policy of the state of Montana that the manufacture of liquor including the distillation, rectification, bottling and processing as these terms are defined under the provisions of the laws of the United States shall be authorized and permitted by any brewer, distiller, rectifier or other person duly licensed under any provision of any statute of the United States of America in a place and in the manner authorized by or under any statute of the United States provided the Montana state department of revenue may make such regulations as the department deems necessary with respect thereto, not inconsistent with this code, or with the statutes of the United States of America or regulations issued under the provisions of the federal Alcohol Administration Act, Title 27, United States Code sections 201 through 212 inclusive or regulations issued under the provisions of the Internal Revenue Code, Title 26, United States Code, sections 5001 through 5693, inclusive.

(2) Nothing in this code shall prevent—

(a) The sale of liquor by any person to the department;

(b) The purchase, importation and sale of liquor by the department for the purposes of and in accordance with this code.

History: En. Sec. 35, Ch. 105, L. 1933; amd. Sec. 1, Ch. 67, L. 1965; Sec. 4-140, R. C. M. 1947; amd. and redes. 4-1-202 by Sec. 14, Ch. 387, L. 1975.

#### Amendments

The 1975 amendment renumbered this section; substituted "department of revenue" for "state liquor control board"; and made minor changes in phraseology.

**4-1-203. (2815.95) Preparations not subject to code.** (1) Subject to the provisions of this section, nothing in this code shall, by reason only that such preparation contains alcohol, prevent the manufacture, sale, purchase or consumption—

(a) of any extract, essence or tincture or other preparation containing alcohol, which is prepared according to a formula of the United States Pharmacopoeia, or according to a formula approved of by the department; or

(b) of any proprietary or patent medicine prepared according to a formula approved of by the department.

(2) The department, if of opinion that any such proprietary or patent medicine, extract, essence, tincture or preparation which contains alcohol, or any other preparation of a solid, semisolid or liquid nature containing alcohol which, or any extract from which, can be used as a beverage or as the ingredient of any beverage, may prohibit the sale thereof by retail within the state, or the possession of the same for sale by retail within the state, except by a state liquor store, or by persons duly licensed by the department to keep and sell the same by retail in accordance with this act and the regulations made thereunder.

(3) The department shall notify the manufacturer or vendor of such proprietary or patent medicine, extract, essence, tincture or preparation, of the said prohibition and from and after the date of such notification any person within the state selling or keeping for sale any such proprietary

or patent medicine, extract, essence, tincture or preparation so prohibited as aforesaid shall be guilty of an offense under this code.

**History:** En. Sec. 36, Ch. 105, L. 1933; Sec. 4-141, R. C. M. 1947; amd. and redes. 4-1-203 by Sec. 15, Ch. 387, L. 1975.

**Amendments**

The 1975 amendment renumbered this section; substituted "department" for "board" throughout the section; and made minor changes in phraseology.

**4-1-204. Health professions exemption.** A physician, dentist, veterinarian or pharmacist, acting within the scope of his professional responsibility and license to practice, who prescribes, prepares, or administers alcohol or substances containing alcohol, and sells or charges a fee, does not violate the prohibitions of this title.

**History:** En. 4-1-204 by Sec. 111, Ch. 387, L. 1975.

**4-1-205. (2815.93) Licensed hospital or health care facility—restrictions—violations.** Any person in charge of an institution regularly conducted as a licensed hospital or health care facility, may administer liquor purchased by him to any patient or inmate of the institution and may charge for the liquor so administered; but no liquor shall be administered by any person under this section except to bona fide patients or inmates of the institution of which he is in charge and every person in charge of an institution who administers liquor in evasion or violation of this code shall be guilty of an offense against this code.

**History:** En. Sec. 34, Ch. 105, L. 1933; amd. Sec. 9, Ch. 154, L. 1965; Sec. 4-139, R. C. M. 1947; amd. and redes. 4-1-205 by Sec. 13, Ch. 387, L. 1975.

**Amendments**

The 1975 amendment renumbered this section; inserted "licensed" before "hospital" near the beginning of the section; substituted "or health care facility" for "sanitarium for the care of persons in ill

health, or as a home devoted exclusively to the care of aged people" near the beginning of the section; deleted "who is in need of the same, either by way of external application or otherwise for emergency medical purposes" after "inmate of the institution" near the middle of the section; deleted "and in cases of actual need" after "is in charge" near the end of the section; and made minor changes in phraseology.

**4-1-206. Local option.** The electors of a county may, by approving an initiative as provided under Title 37, chapter 3, R. C. M. 1947, prohibit the sale and consumption of liquor, or of all alcoholic beverages, within the county. If such initiative is presented to the board of county commissioners, the board may not approve it but shall submit the proposal to the people under section 37-301.

**History:** En. 4-1-206 by Sec. 112, Ch. 387, L. 1975.

**Cross-References**

County initiative and referendum, petition, adoption, submission, sec. 37-301.

**4-1-301. (2815.63) General powers and duties of the department.** The department of revenue shall have the powers and duties to administer the Montana Alcoholic Beverage Code, including the general control, management and supervision of all state liquor stores.

**History:** En. Sec. 4, Ch. 105, L. 1933; Ch. 243, L. 1947; amd. Sec. 1, Ch. 140, amd. Sec. 1, Ch. 30, L. 1937; amd. Sec. 1, L. 1949; amd. Sec. 1, Ch. 183, L. 1951;

Sec. 4-107, R. C. M. 1947; amd. and redes. 4-1-301 by Sec. 3, Ch. 387, L. 1975.

Beverage Code" for "State Liquor Control Act of Montana and the Montana Beer Act"; and deleted provisions at the end of the section delegating control and supervision of state liquor stores to the state liquor administrator.

#### Amendments

The 1975 amendment renumbered this section; substituted "department of revenue" for "board"; substituted "Alcoholic

**4-1-302. (2815.67) Functions, powers and duties of department of revenue.** The department of revenue shall have the following functions, duties and powers:

(a) To buy, import, and have in its possession for sale, and sell, liquors, in the manner set forth in this code;

(b) To control the possession, sale and delivery of liquors in accordance with the provisions of this code;

(c) To determine the municipalities within which state liquor stores shall be established throughout the state, and the situation of the stores within every such municipality;

(d) To lease, furnish and equip any building or land required for the operation of this code;

(e) To buy or lease all plant and equipment it may consider necessary and useful in carrying into effect the objects and purposes of this code;

(f) To employ store managers, and also every officer, investigator, clerk or other employee, required for the operation or carrying out of this code, and to dismiss the same, fix their salaries or remuneration, assign them their title, define their respective duties and powers, and to engage the service of experts and persons engaged in the practice of a profession, if deemed expedient;

(g) To determine the nature, form and capacity of all packages to be used for containing liquor kept or sold under this code;

(h) To grant and issue licenses under and in pursuance to this code;

(i) Without in any way limiting, or being limited by the foregoing, to do all such things as are deemed necessary or advisable by the department for the purpose of carrying into effect the provisions of this code, or the regulations made thereunder.

**History:** En. Sec. 8, Ch. 105, L. 1933; amd. Sec. 3, Ch. 154, L. 1965; Sec. 4-112, R. C. M. 1947; amd. and redes. 4-1-302 by Sec. 5, Ch. 387, L. 1975.

control board; substituted "To employ store managers" for "To appoint vendors" at the beginning of subdivision (f); substituted "investigator" for "inspector" near the beginning of subdivision (f); deleted the proviso at the end of subdivision (g); and made minor changes in phraseology. For former text, see sec. 4-112 in parent volume.

#### Amendments

The 1975 amendment renumbered this section; substituted "department of revenue" for references to the Montana liquor

**4-1-303. (2815.68) Regulations may be made by department of revenue—scope of regulations.** (1) The department of revenue may make such regulations, not inconsistent with this code, as to the department of revenue seem necessary, for carrying out the provisions of this code, and for the efficient administration thereof.

(2) Without thereby limiting the generality of the provisions contained in subsection (1) hereof, it is declared the power of the department



to make regulations in the manner set out in that subsection [which] shall extend to and include the following:

(a) Regulating the equipment and management of state stores and warehouses in which liquor is kept or sold and prescribing the books and records to be kept therein;

(b) Prescribing the duties of the employees of the liquor division, and regulating their conduct while in the discharge of their duties;

(c) Governing the purchase of liquor and the furnishing of liquor to state stores established under this code;

(d) Determining the classes, varieties and brands of liquor to be kept for sale at any state store;

(e) Prescribing, subject to this code, the hours during which state liquor stores shall be kept open for the sale of alcoholic beverages;

(f) Providing for the issuing and distributing of price lists showing the price to be paid by purchasers for each class, variety or brand of liquor kept for sale under this code;

(g) Prescribing an official seal which shall be attached to every package of liquor sold or sealed under this code;

(h) Prescribing forms to be used for the purpose of this code or of the regulations made thereunder, and the terms and conditions in permits and licenses issued and granted under this code;

(i) Prescribing the form of records of purchase of liquor, and the reports to be made thereon to the board, and providing for inspection of the records so kept;

(j) Prescribing the manner of giving and serving notices required by this code or the regulations thereunder;

(k) Prescribing the fees payable in respect of permits and licenses issued under this code for which no fees are prescribed in this code, and prescribing the fees for anything done or permitted to be done under the regulations made thereunder;

(l) Prescribing, subject to the provisions of this code, the conditions and qualifications necessary for the obtaining of a liquor or beer license, and the books and records to be kept and the returns to be made by the licensees and providing for the inspection of such licensed premises;

(m) Specifying and describing the place and the manner in which liquor or beer may be lawfully kept or stored;

(n) Specifying and regulating the time and periods when, and the manner, methods and means by which, vendors and brewers shall deliver liquor under this code, and the time and periods when, and the manner, methods and means by which liquor, under this code, may be lawfully conveyed or carried;

(o) Governing the conduct, management and equipment of any premises licensed to sell liquor or beer under this code;

(p) Providing for the imposition and collection of taxes and making regulations respecting returns, accounting and payment to the department of revenue of the taxes.

(3) Whenever it is provided in this code that any act, matter or thing, may be done, if permitted or authorized by the regulations, or may

be done in accordance with the regulations or as provided by the regulations, the department of revenue, subject to the restrictions set out in subsection (1) hereof, shall have the power to make regulations respecting such act, matter or thing.

**History:** En. Sec. 9, Ch. 105, L. 1933; amd. Sec. 1, Ch. 43, L. 1965; amd. Sec. 1, Ch. 154, L. 1965; Sec. 4-113, R. C. M. 1947; amd. and redes. 4-1-303 by Sec. 6, Ch. 387, L. 1975.

#### Compiler's Notes

The compiler has inserted the bracketed word "which" in subsection (2).

#### Amendments

The 1975 amendment renumbered this section; substituted "department of revenue" for "board" throughout the section; substituted "employees of the liquor division" in subdivision (2) (b) for "officers, clerks and servants of the board"; deleted "days and" before "hours" in subdivision (2) (e); deleted "and hotels, and clubs licensed to sell beer under this act" after "stores" in subdivision (2) (e); substituted "alcoholic beverages" for "liquor" at the

end of subdivision (2) (e); deleted "serially numbered" before "seal" in subdivision (2) (g); deleted former subdivisions (i), (n) and (r); redesignated former subdivisions (j) to (m), (o) to (q) and (s) as (i) to (p); substituted "a liquor or beer license" for "club licenses" in present subdivision (1); deleted "any advertisement of the application, if required by the board and" before "the conditions" in present subdivision (1); inserted "or beer" after "liquor" in present subdivision (2) (m); inserted "liquor or" before "beer" in present subdivision (2) (o); substituted "taxes" for "the tax to be collected or levied under section 4-147 [4-317]" in present subdivision (2) (p); deleted "to be made by a brewer" in reference to payment of tax in present subdivision (2) (p); and made minor changes in phraseology. For former text, see sec. 4-113 in parent volume.

**4-1-304. (2815.107) Prohibited acts within division.** (1) No officer or employee of the liquor division, including those engaged in the sale of liquor at the various state liquor stores, may be directly or indirectly interested or engaged in any other business or undertaking dealing in liquor, whether as owner, part owner, partner, member of syndicate, shareholder, agent, or employee and whether for his own benefit or in a fiduciary capacity for some other person.

(2) No member or employee of the division or any employee of the state may solicit or receive directly or indirectly any commission, remuneration, or gift whatsoever from any person or corporation having sold, selling, or offering liquor for sale to the state or division pursuant to this code.

(3) No person selling or offering for sale to or purchasing liquor from the state liquor division may either directly or indirectly offer to pay any commission, profit, or remuneration or make any gift to any member or employee of the division, to any employee of the state, or to anyone on behalf of such member or employee.

(4) The prohibition contained in subsection (3) of this section does not prohibit the division from receiving samples of liquor for the purpose of chemical testing, subject to the following limitations:

(a) Each manufacturer, distiller, compounder, rectifier, importer, or wholesale distributor or any other person, firm, or corporation proposing to sell any liquor to the Montana liquor division shall submit, without cost to the division prior to the original purchase, an analysis of each brand and may submit a representative sample not exceeding 25 fluid ounces of such merchandise to the division.

(b) When a brand of liquor has been accepted for testing by the divi-



sion, the division shall forward the sample, unopened and in its entirety, to a qualified chemical laboratory for analysis.

(c) The division shall maintain written records of all samples received. The records shall show the brand name, amount and from whom received, date received, the laboratory or chemist to whom forwarded, the division's action on the brand, and the person to whom delivered or other final disposition of the sample.

(5) No liquor, wine, or other alcoholic beverage may be withdrawn from the regular warehouse inventory or from the state liquor stores of the Montana liquor division for any purpose other than sale at the prevailing state retail prices or for destroying damaged or defective merchandise. The division shall maintain a written record including the type, brand, container size, number of bottles or other units, signatures of witnesses, and method of destruction or other disposition of damaged or defective warehouse or state store merchandise.

**History:** En. Sec. 48, Ch. 105, L. 1933; amd. Sec. 1, Ch. 144, L. 1965; amd. Sec. 1, Ch. 72, L. 1971; Sec. 4-153, R. C. M. 1947; amd. and redes. 4-1-304 by Sec. 18, Ch. 387, L. 1975; amd. Sec. 1, Ch. 496, L. 1977.

#### Amendments

The 1971 amendment substituted "chemical testing, subject to the following limitations" at the end of the preliminary paragraph of subsection (4) for "quality determination"; inserted paragraphs (a) and (b) in subsection (4); designated the former second sentence of subsection (4) as paragraph (4)(c); inserted "date received, the laboratory or chemist to whom forwarded, the board's action on the brand" in paragraph (4)(c); and added subsection (5).

The 1975 amendment renumbered this section; substituted "no officer or employee of the liquor division" for "no member or

employee of the board" at the beginning of subsection (1); and substituted "division" or "liquor division" for "board" or "control board" throughout the section.

The 1977 amendment inserted "including those engaged in the sale of liquor at the various state liquor stores" near the beginning of subsection (1); deleted "spirituous" before "liquor" in subdivision (4)(a); substituted "division" for "board" at the end of subdivision (4)(a); substituted "alcoholic beverage" for "spirituous beverage" near the beginning of subsection (5); and made minor changes in phraseology, punctuation and style.

#### Effective Date

Section 2 of Ch. 72, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 27, 1971.

### 4-1-305. Repealed.

#### Repeal

Section 4-1-305 (Sec. 20, Ch. 84, L. 1937; Sec. 99, Ch. 387, L. 1975), relating to em-

ployees of the liquor division not being allowed to deal in liquor, was repealed by Sec. 17, Ch. 496, Laws 1977.

**4-1-306. Property and moneys acquired belong to state—expenses of administration, how paid.** All property, whether real or personal, all moneys acquired, administered, possessed or received by the department and all profits earned in the administration of this code, shall be the property of the state, and all expenses, debts and liabilities incurred by the department in connection with the administration of this code, shall be paid by the department from the moneys received by the department under such administration.

**History:** En. Sec. 91, Ch. 105, L. 1933; Sec. 4-226, R. C. M. 1947; amd. and redes. 4-1-306 by Sec. 40, Ch. 387, L. 1975.

#### Amendments

The 1975 amendment renumbered this section; substituted "department" for "board" throughout the section; and made minor changes in phraseology.



**4-1-307. (2815.64) Repealed.****Repeal**

Section 4-1-307 (Sec. 5, Ch. 105, L. 1933; Sec. 4, Ch. 387, L. 1975), relating to the

location of the principal office of the department of revenue at Helena, was repealed by Sec. 17, Ch. 496, Laws 1977.

**4-1-401. License tax on liquor—amount—distribution of proceeds.** The department of revenue is hereby authorized and directed to charge, receive and collect at the time of sale and delivery of any liquor under any provisions of the laws of the state of Montana a license tax of 10% of the retail selling price on all liquor so sold and delivered. Said tax shall be charged and collected on all liquor brought into the state and taxed by the department of revenue. The retail selling price shall be computed by adding to the cost of said liquor the state markup as designated by the department. Said 10% license tax shall be figured in the same manner as the state excise tax and shall be in addition to said state excise tax. The department of revenue shall retain the amount of such 10% license tax so received in a separate account. Two-thirds of these revenues shall be distributed to the counties according to the amount of liquor purchased in each county. One-third of these revenues shall be retained by the state. Provided, however, in the case of purchases of liquor by a retail liquor licensee for use in his business, the department shall make such regulations as are necessary to apportion that proportion of license tax so generated to the county where the licensed establishment is located, for use as provided in section 4-1-402, R.C.M. 1947. The department of revenue shall pay quarterly to each county treasurer the proportion of the license tax due each county.

The county treasurer of each county shall retain 50% of said license tax, and shall, within 30 days after receipt thereof, apportion the remaining 50% thereof to the treasurers of the incorporated cities and towns within his county, said apportionment to be based in each instance upon the proportion which the gross sale of liquor in such incorporated city or town bears to the gross sale of liquor in all of the incorporated cities and towns in his said county.

Of the 50% of the tax retained by the county, the county treasurer shall deposit six-sevenths of this amount in a fund within the county for the treatment, rehabilitation, and prevention of alcoholism as approved by the state of Montana. The remaining one-seventh of the funds shall be retained in the county treasury for use by that county.

The one-third of the license tax on liquor retained by the state shall be deposited with the state treasurer to the credit of the department of institutions each quarter for the treatment, rehabilitation and prevention of alcoholism as approved by the state.

**History:** En. Sec. 1, Ch. 217, L. 1957; amd. Sec. 1, Ch. 153, L. 1969; amd. Sec. 17, Ch. 302, L. 1974; Sec. 4-240, R. C. M. 1947; amd. and redes. 4-1-401 by Sec. 44, Ch. 387, L. 1975; amd. Sec. 8, Ch. 414, L. 1977.

**Amendments**

The 1969 amendment inserted the sixth sentence of the first paragraph.

The 1974 amendment substituted references to the department of revenue throughout the section for references to the Montana liquor control board; increased the license tax one per cent; and substituted the present 4/5 and 1/5 apportionment scheme for one in which all revenues were distributed to the counties.

The 1975 amendment renumbered this section; substituted "section 4-1-402" for

"section 4-241" near the end of the first paragraph; and made a minor change in phraseology.

The 1977 amendment increased the tax from 5% to 10% of the retail selling price in the first paragraph; changed the allocation of the tax revenues from four-fifths to the county and one-fifth to the state

to two-thirds to the counties and one-third to the state in the first paragraph; changed the allocation of the proceeds received by the county from three-fourths to the cities and towns and one-fourth retained by the counties to 50% for each; and added the last two paragraphs.

#### 4-1-402. [Transferred from 4-241.]

##### Compiler's Notes

This section was originally numbered 4-241. Section 120, Ch. 387, Laws of 1975 renumbered it to appear here. Because

there has been no change in text, the section is not reprinted here but may be found in the parent volume as 4-241.

**4-1-403. Excise liquor tax—collection.** The department of revenue is hereby authorized and directed to charge, receive and collect at the time of the sale and delivery of any liquor as authorized under any provision of the laws of the state of Montana an excise tax at the rate of sixteen per centum (16%) of the retail selling price on all liquor so sold and delivered. The Montana department of revenue shall retain the amount of such excise tax received in a separate account and shall deposit with the state treasurer, to the credit of the general fund, such sums so collected and received not later than the tenth (10th) day of each and every month.

**History:** En. Sec. 15, Ch. 84, L. 1937; amd. Sec. 1, Ch. 41, L. 1939; amd. Sec. 1, Ch. 180, L. 1957. Approved at referendum, Nov. 4, 1958; Sec. 4-417, R. C. M. 1947; amd. and redes. 4-1-403 by Sec. 94, Ch. 387, L. 1975.

##### Amendments

The 1975 amendment renumbered this section; and substituted "department of revenue" for "liquor control board" throughout the section.

**4-1-404. (2815.29) Tax on imported beer—computation in case of barrels of capacity other than thirty-one gallons.** A tax of three dollars (\$3) per barrel of thirty-one (31) gallons, is hereby levied and imposed on each and every barrel of beer manufactured out of this state and sold herein by any wholesaler, which said tax shall be due at the end of each month from said wholesaler, upon any such beer so sold by him during that month. As to any beer imported and sold in containers other than barrels, or in barrels of more or less capacity than thirty-one (31) gallons, the quantity content shall be ascertained and computed by the department of revenue in determining the amount of tax due, as herein provided for. An additional tax of \$1.00 per barrel is levied and imposed as provided by this section, and such additional tax is also to be levied and imposed at the same rate upon beer manufactured within the state. The additional tax of \$1.00 is to be deposited, notwithstanding sections 4-1-407 and 4-1-408, or any other provision, with the state treasurer to the credit of the department of institutions each quarter for the treatment, rehabilitation, and prevention of alcoholism as approved by the state.

**History:** En. Sec. 20, Ch. 106, L. 1933; amd. Sec. 8, Ch. 46, Ex. L. 1933; amd. Sec. 2, Ch. 135, L. 1959; amd. Sec. 2, Ch. 296, L. 1969; amd. Sec. 2, Ch. 421, L. 1971;

amd. Sec. 18, Ch. 302, L. 1974; Sec. 4-324, R. C. M. 1947; redes. 4-1-404 by Sec. 120, Ch. 387, L. 1975; amd. Sec. 9, Ch. 414, L. 1977.

**Amendments**

The 1969 amendment added to the end of the section a proviso increasing the tax from \$1.50 to \$3.00 per barrel for the biennium ending June 30, 1971.

The 1971 amendment made the 1969 change permanent by increasing the tax specified at the beginning of the section from \$1.50 to \$3.00 and deleting the proviso added by the 1969 amendment.

The 1974 amendment substituted "department of revenue" at the end of the second sentence for "board"; and added

the third and fourth sentences concerning an additional tax.

The 1977 amendment increased the additional tax from 25 cents per barrel to \$1.00 per barrel in the third sentence; and substituted "with the state treasurer to the credit of the department of institutions each quarter for the treatment, rehabilitation, and prevention of alcoholism as approved by the state" at the end of the last sentence for "in the general fund."

**4-1-405. Barrelage tax on beer.** In addition to the annual license tax imposed by section 4-4-401, a tax of three dollars (\$3) per barrel of thirty-one (31) gallons is hereby levied and imposed on each and every barrel of beer sold by any duly licensed brewer who manufactures beer in the state of Montana, which said barrelage tax shall be due at the end of each month and shall be payable with the brewer's monthly return or statement required to be made to the department under the provisions of section 4-3-203.

**History:** En. 4-1-405 by Sec. 113, Ch. 387, L. 1975.

**4-1-406. (2815.154) Disposition of money received.** All moneys received from the sale of liquor at the state liquor stores shall be deposited in the revolving fund in the state treasury to the credit of the department of revenue. The department is hereby authorized to purchase liquor from moneys deposited to its account in the revolving fund. The department shall pay from its account in the revolving fund its administrative expenses, subject to the limits imposed by legislative appropriation. No obligation created or incurred by the department may ever be or become a debt or claim against the state of Montana but shall be payable by the department solely from funds derived from the operation of state liquor stores. The department shall pay into the state treasury to the credit of the general fund the receipts from all taxes and licenses by it collected and also the net proceeds from the operation of state liquor stores.

**History:** En. Sec. 94, Ch. 105, L. 1933; amd. Sec. 1, Ch. 54, L. 1939; amd. Sec. 211, Ch. 147, L. 1963; Sec. 4-229, R. C. M. 1947; amd. and redes. 4-1-406 by Sec. 41, Ch. 387, L. 1975; amd. Sec. 1, Ch. 398, L. 1977.

**Amendments**

The 1975 amendment renumbered this section; and substituted "department" for "board" throughout the section.

The 1977 amendment substituted "pay from its account in the revolving fund its administrative expenses" in the third sentence for "transfer from its account in the revolving fund to its account in the earmarked revenue fund such moneys which are necessary to pay its administrative expense"; and made minor changes in phraseology and punctuation.

**4-1-407. (2815.50) Revenue to be paid to state treasurer—disposition of revenue.** Except as provided in section 4-1-408 of this code, all fees, charges, taxes and revenues collected by or under authority of the Montana



department, shall be deposited with the state treasurer. He shall deposit the funds to the credit of the state general fund.

**History:** En. Sec. 49, Ch. 106, L. 1933; amd. Sec. 17, Ch. 46, Ex. L. 1933; amd. Sec. 20B, Ch. 109, L. 1935; amd. Sec. 9, Ch. 14, L. 1941; amd. Sec. 1, Ch. 121, L. 1949; amd. Sec. 20, Ch. 249, L. 1967; amd. Sec. 3, Ch. 296, L. 1969; amd. Sec. 3, Ch. 421, L. 1971; Sec. 4-347, R. C. M. 1947; amd. and redes. 4-1-407 by Sec. 72, Ch. 387, L. 1975; amd. Sec. 1, Ch. 286, L. 1977.

#### Amendments

The 1969 amendment inserted "Except as provided in section 4 of this act."

The 1971 amendment substituted "section 4-347.1" for "section 4"; and made a minor change in style.

The 1975 amendment renumbered this section; substituted "section 4-1-408" for "section 4-347.1"; substituted "Montana

department" for "Montana liquor control board, under the Montana Beer Act"; and made minor changes in phraseology.

The 1977 amendment substituted "deposited with" for "paid over to"; deleted "on or before the tenth (10th) day of each and every month who" after "state treasurer"; and made minor changes in phraseology and punctuation.

#### Separability Clause

Section 5 of Ch. 296, Laws 1969 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

**4-1-408. Revenue allocation.** All revenue received from taxes on beer under sections 4-1-404 and 4-1-405, R. C. M. 1947, over and above one dollar and fifty cents (\$1.50) per barrel of thirty-one (31) gallons shall be deposited with the state treasurer to the credit of the incorporated cities and towns beer tax account in the earmarked revenue fund. The state treasurer shall, monthly, distribute this amount of money to the incorporated cities and towns in the direct proportion that the population of each city and town bears to the total population of all incorporated cities and towns as shown in the latest official federal census. For cities and towns incorporated after the latest official federal census, the census shall be determined as of the date of incorporation as evidenced by the certificate of the incorporating officials of that city or town. If a city or town disincorporates, it shall cease to receive any funds under this section and the amount previously distributed to the city or town shall be distributed to the remaining incorporated cities and towns. All funds received by cities and towns under this section shall be expended for state purposes such as law enforcement, maintenance of the transportation system, and public health.

**History:** En. 4-347.1 by Sec. 4, Ch. 421, L. 1971; Sec. 4-347.1, R. C. M. 1947; amd. and redes. 4-1-408 by Sec. 73, Ch. 387, L. 1975.

#### Title of Act

An act amending sections 4-317, 4-324 and 4-347, R. C. M. 1947, and section 4, Chapter 296, Laws of 1969, to make the current beer barrelage tax permanent; providing for severability; repealing all acts and parts of acts in conflict herewith.

#### Amendments

The 1975 amendment renumbered this section; and substituted "sections 4-1-404

and 4-1-405" for "sections 4-317 and 4-324" at the beginning of the section.

#### Separability Clause

Section 4 of Ch. 421, Laws 1971 read "If any section, subdivision, sentence or word of this act shall be determined by a court of competent jurisdiction to be unconstitutional or inoperative, such determination shall not affect the remaining portions of this act."

#### Repealing Clause

Section 5 of Ch. 421, Laws 1971 repealed all acts and parts of acts in conflict therewith.

## CHAPTER 2—STATE LIQUOR STORES

## Section

- 4-2-101. Establishment of state liquor stores—hours—kinds and prices of liquor.  
 4-2-102. Containers to be sealed with official seal—opening package on liquor store premises forbidden.  
 4-2-103. Conveyance of liquors—opening liquor during transit forbidden.  
 4-2-104. When sales of liquor forbidden.  
 4-2-105. Place and time of selling liquor.  
 4-2-106. Provisions concerning sale of liquor.  
 4-2-107. Liquor not to be consumed on premises of state store.  
 4-2-201. Reduction for quantity sales of liquor.  
 4-2-202. Price of liquor made in Montana.  
 4-2-203. Repealing Clause.  
 4-2-204. Department to sell to licensees—posted price.  
 4-2-205. Duplicate invoices of sales required.

**4-201 to 4-205. (2815.126 to 2815.130) Repealed.****Repeal**

Sections 4-201 to 4-205 (Secs. 67 to 71, Ch. 105, L. 1933; Secs. 12, 13, Ch. 154, L. 1965; Sec. 15, Ch. 302, L. 1974), relating to interdiction orders and procedure, were repealed by Sec. 121, Ch. 387, Laws 1975.

**4-206, 4-207. [Transferred.]****Compiler's Notes**

Section 120, Ch. 387, Laws of 1975 re-numbered these sections as secs. 4-6-107, 4-6-108.

**4-208. [Transferred.]****Compiler's Notes**

Section 25, Ch. 387, Laws of 1975 re-numbered this section as sec. 4-6-203.

**4-209 to 4-213. [Transferred.]****Compiler's Notes**

Sections 26 to 30, Ch. 387, Laws of 1975 renumbered these sections as secs. 4-6-207 to 4-6-211.

**4-214 to 4-220. [Transferred.]****Compiler's Notes**

Sections 31 to 37, Ch. 387, Laws of 1975 renumbered these sections as secs. 4-6-303 to 4-6-309.

**4-221 to 4-223. (2815.146 to 2815.148) Repealed.****Repeal**

Sections 4-221 to 4-223 (Secs. 87, 88, Ch. 105, L. 1933; Sec. 2, Ch. 166, L. 1935), relating to the burden of proof in liquor violation cases and the jurisdiction of the district court in prosecutions, were repealed by Sec. 121, Ch. 387, Laws 1975.

**4-224. [Transferred.]****Compiler's Notes**

Section 38, Ch. 387, Laws of 1975 re-numbered this section as sec. 4-6-302.

**4-225. [Transferred.]****Compiler's Notes**

Section 39, Ch. 387, Laws of 1975 re-numbered this section as sec. 4-6-201.

**4-226. [Transferred.]****Compiler's Notes**

Section 40, Ch. 387, Laws of 1975 re-numbered this section as sec. 4-1-306.

**4-227, 4-228. (2815.152, 2815.153) Repealed.****Repeal**

Sections 4-227, 4-228 (Secs. 92, 93, Ch. 105, L. 1933; Sec. 1, Ch. 86, L. 1949; Sec. 6, Ch. 93, L. 1969), relating to biennial

reports by the board to the state examiner, and board payment of act administration expenses, were repealed by Sec. 121, Ch. 387, Laws 1975.

**4-229. [Transferred.]****Compiler's Notes**

Section 41, Ch. 387, Laws of 1975 re-numbered this section as sec. 4-1-406.

**4-230. (2815.155) Repealed.****Repeal**

Section 4-230 (Sec. 95, Ch. 105, L. 1933; Sec. 2, Ch. 86, L. 1949; Sec. 21, Ch. 249,

L. 1967), relating to the board's balance sheet and profit and loss statement, was repealed by Sec. 121, Ch. 387, Laws 1975.

**4-232. (2815.158) Repealed.****Repeal**

Section 4-232 (Sec. 98, Ch. 105, L. 1933), relating to liquor purchase orders

and cancellation of orders, was repealed by Sec. 121, Ch. 387, Laws 1975.

**4-233. [Transferred.]****Compiler's Notes**

Section 42, Ch. 387, Laws of 1975 re-numbered this section as sec. 4-1-104.

**4-234 to 4-237. (2815.160 to 2815.163) Repealed.****Repeal**

Sections 4-234 to 4-237 (Secs. 100 to 103, Ch. 105, L. 1933; Sec. 2, Ch. 165, L. 1951; Sec. 14, Ch. 154, L. 1965; Sec. 1, Ch. 77, L. 1971), relating to the administration of oaths by officers, creation of

indebtedness by the board, effective dates for the original regulatory acts, and penalty for violations when not otherwise provided, were repealed by Sec. 121, Ch. 387, Laws 1975.

**4-238. [Transferred.]****Compiler's Notes**

Section 43, Ch. 387, Laws of 1975 re-numbered this section as sec. 4-6-401.

**4-239. Repealed.****Repeal**

Section 4-239 (Sec. 9, Ch. 30, L. 1937),

relating to nuisance injunctions, was repealed by Sec. 121, Ch. 387, Laws 1975.

**4-240. [Transferred.]****Compiler's Notes**

Section 44, Ch. 387, Laws of 1975 re-numbered this section as sec. 4-1-401.



**4-241. [Transferred.]****Compiler's Notes**

Section 120, Ch. 387, Laws of 1975 re-numbered this section as sec. 4-1-402.

**4-2-101. (2815.69) Establishment of state liquor stores—hours—kinds and prices of liquor.** The department of revenue shall establish and maintain one or more stores, to be known as "state liquor stores," as the department finds feasible for the sale of liquor in accordance with the provisions of this code and the regulations made thereunder; the stores shall be classified according to the volume of business which each store does each fiscal year; the volume of business to be used in figuring each store's classification shall be the volume of business done by the store to be classified during the immediate past fiscal year; stores shall be classified as follows: stores having done a business of four hundred and fifty thousand dollars (\$450,000) or over during the immediate past fiscal year shall be "Class A" stores; stores having done a business of one hundred and forty thousand dollars (\$140,000) and up to four hundred and fifty thousand dollars (\$450,000) during the immediate past fiscal year shall be "Class B" stores; and all stores having done a business of less than one hundred and forty thousand dollars (\$140,000) during the immediate past fiscal year shall be "Class C" stores; in opening new stores the department shall estimate the volume of business which said store will do the first year and classify said store according to the estimate of business; the department shall enter into an agency agreement or employ the necessary help to operate said stores and shall designate the duties to be performed by the agent or employees; the department may, from time to time, fix the prices at which the various classes, varieties and brands of liquor may be sold, and prices shall be the same at all state stores. Such state liquor stores shall be and remain open during such period of the day as the department shall deem advisable, provided, however, that such stores shall be closed for the transaction of business between the close of normal business Saturday p.m. up to the opening of normal business Tuesday a.m. as set by department regulation and including legal holidays.

**History:** En. Sec. 10, Ch. 105, L. 1933; amd. Sec. 4, Ch. 30, L. 1937; amd. Sec. 1, Ch. 237, L. 1947; amd. Sec. 1, Ch. 162, L. 1949; amd. Sec. 1, Ch. 62, L. 1971; Sec. 4-114, R. C. M. 1947; amd. and redes. 4-2-101 by Sec. 7, Ch. 387, L. 1975.

**Amendments**

The 1971 amendment substituted "between the close of normal business Saturday p.m. through the opening of normal business Tuesday a.m. as set by board regulation and including" in the final sentence for "on Sundays."

The 1975 amendment renumbered this section; substituted "department of rev-

enue" or "department" for "board" throughout the section; deleted "at the county seats and such other places as the board deems advisable" after "establish and maintain" near the beginning of the section; inserted "as the department finds feasible" after "state liquor stores" in the first sentence; substituted "the department shall enter into an agency agreement or employ" for "the board shall employ" near the middle of the section; inserted "agent or" before "employees" near the middle of the section; deleted "and election days" at the end of the section; and made minor changes in phraseology.

**4-2-102. (2815.73) Containers to be sealed with official seal—opening package on liquor store premises forbidden.** No liquor may be sold to any

purchaser except in a package sealed with the official seal prescribed by this code, which package may not be opened on the premises of a state store.

**History:** En. Sec. 14, Ch. 105, L. 1933; Sec. 4-119, R. C. M. 1947; redes. 4-2-102 by Sec. 120, Ch. 387, L. 1975; amd. Sec. 2, Ch. 496, L. 1977.

#### Amendments

The 1977 amendment substituted "liquor" for "spirits or wine" at the beginning of the section; and made minor changes in phraseology and punctuation.

**4-2-103. (2815.76) Conveyance of liquors—opening liquor during transit forbidden.** It shall be lawful to carry or convey liquor to any state store, and to and from any warehouse or depot established by the department for the purposes of this code, and when permitted so to do by this code and the regulations made thereunder, and in accordance therewith, it shall be lawful for any common carrier, or other person, to carry or convey liquor sold by a vendor from a state store, or beer, when lawfully sold by a brewer, from the premises wherein such beer was manufactured, or from premises where the beer may be lawfully kept and sold, to any place to which the same may be lawfully delivered under this code, and the regulations made thereunder;

Provided that no such common carrier or any other person, shall open, or break, or allow to be opened or broken, any package or vessel containing liquor, or drink or use, or allow to be drunk or used, any liquor therefrom, while being so carried or conveyed.

**History:** En. Sec. 17, Ch. 105, L. 1933; Sec. 4-122, R. C. M. 1947; amd. and redes. 4-2-103 by Sec. 12, Ch. 387, L. 1975.

#### Amendments

The 1975 amendment renumbered this section; substituted "department" for "board"; and made minor changes in phraseology.

**4-2-104. (2815.75) When sales of liquor forbidden.** No sale or delivery of liquor shall be made on or from the premises of any state liquor store, nor shall any store be open for the sale of liquor

(a) on any holiday recognized by state law;

(b) during such other period and on such other days as the department may direct.

**History:** En. Sec. 16, Ch. 105, L. 1933; amd. Sec. 5, Ch. 30, L. 1937; amd. Sec. 2, Ch. 62, L. 1971; Sec. 4-121, R. C. M. 1947; amd. and redes. 4-2-104 by Sec. 11, Ch. 387, L. 1975.

#### Amendments

The 1975 amendment renumbered this section; added "recognized by state law" to subdivision (a); deleted former subdivisions (b) and (c); redesignated former subdivision (d) as (b); and substituted "department" for "board" in subdivision (b). For former provisions, see sec. 4-121 in parent volume.

#### Compiler's Notes

Laws 1971, Ch. 62 purported to amend this section but made no change.

**4-2-105. (2815.106) Place and time of selling liquor.** No store manager, and no person acting as the clerk or servant of or in any capacity for any manager, shall sell liquor in any other place or at any other time or otherwise than as authorized by this code and the regulations.

**History:** En. Sec. 47, Ch. 105, L. 1933; Sec. 4-152, R. C. M. 1947; amd. and redes. 4-2-105 by Sec. 17, Ch. 387, L. 1975.

#### Amendments

The 1975 amendment renumbered this section; substituted "store manager" and "manager" for "vendor"; and made a minor change in phraseology.



**4-2-106. (2815.71) Provisions concerning sale of liquor.** A store manager may sell to any person such liquor as that person is entitled to purchase in conformity with the provisions of this code and the regulations made thereunder, provided that no delivery shall take place until the purchaser has paid the purchase price.

**History:** En. Sec. 12, Ch. 105, L. 1933; amd. Sec. 4, Ch. 154, L. 1965; amd. Sec. 1, Ch. 162, L. 1969; Sec. 4-116, R. C. M. 1947; amd. and redes. 4-2-106 by Sec. 8, Ch. 387, L. 1975.

#### Amendments

The 1969 amendment deleted the subsection (1) designation at the beginning of the section and added the proviso; deleted subsection (2) which prohibited delivery before vendor had received a

written order and had been paid the purchase price in cash; and deleted subsection (3) which provided that a vendor might sell and deliver beer provided that no delivery should take place until the purchaser had paid in the manner prescribed by regulations.

The 1975 amendment renumbered this section; substituted "store manager" for "vendor" at the beginning of the section; and made a minor change in phraseology.

**4-2-107. (2815.74) Liquor not to be consumed on premises of state store.** No officer, clerk or servant of the department, employed in the state store, shall allow any liquor to be consumed on the premises of a state store, nor shall any person consume any liquor on such premises.

**History:** En. Sec. 15, Ch. 105, L. 1933; Sec. 4-120, R. C. M. 1947; amd. and redes. 4-2-107 by Sec. 10, Ch. 387, L. 1975.

#### Amendments

The 1975 amendment renumbered this section; and substituted "department" for "board."

**4-2-201. Reduction for quantity sales of liquor.** Reduction of five per cent (5%) of the retail price of liquor sold at the state liquor store shall be made by the department for sales of liquor to any person purchasing liquor in unbroken case lots. No other reduction shall be made by the department of revenue for quantity sales of liquor.

**History:** En. Sec. 1, Ch. 185, L. 1943; amd. Sec. 1, Ch. 334, L. 1975; Sec. 4-117, R. C. M. 1947; amd. and redes. 4-2-201 by Sec. 9, Ch. 387, L. 1975.

#### Compiler's Notes

This section, formerly 4-117, was amended twice in 1975, once by Ch. 334, and once by Ch. 387. The Ch. 334 amendment included the only change in language made by the Ch. 387 amendment.

#### Amendments

Chapter 334, Laws of 1975, substituted the present language for: "No reductions shall be made by the Montana liquor control board for sales of liquor in quantity."

Chapter 387, Laws of 1975, renumbered the section; and substituted "department" for "Montana liquor control board."

**4-2-202. Price of liquor made in Montana.** In computing the selling price of all liquor sold and delivered by the Montana department of revenue, the department of revenue is authorized and directed to designate and establish the state markup on all liquor either manufactured, distilled, rectified, bottled or processed in Montana at ten per cent (10%) less than the amount of markup of products of out-of-state manufacturers, distillers, rectifiers and processors.

**History:** En. 4-114.1 by Sec. 1, Ch. 359, L. 1974; Sec. 4-114.1, R. C. M. 1947; redes. 4-2-202 by Sec. 120, Ch. 387, L. 1975.

#### Title of Act

An act to authorize and direct the Montana department of revenue in computing



the retail selling price of liquor to designate and establish a lesser retail selling price on all liquor manufactured, distilled, rectified, bottled or processed in Montana

than is designated and established for liquor imported from without the state; and providing an effective date.

**4-2-203. Repealing clause.** All acts and parts of acts in conflict herewith are hereby repealed.

**History:** En. 4-114.2 by Sec. 2, Ch. 359, L. 1974; Sec. 4-114.2, R. C. M. 1947; redes. 4-2-203 by Sec. 120, Ch. 387, L. 1975.

**Effective Date**

Section 3 of Ch. 359, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 29, 1974.

**4-2-204. Department to sell to licensees—posted price.** The department may sell through its stores all kinds of liquor, wine, and cordials kept in stock to licensees licensed under this code at the posted price thereof in the store in which the liquor is sold. All sales shall be upon a cash basis. The posted price means the retail price of such liquor as fixed and determined by the department and in addition thereto an excise and license tax as provided in this code.

**History:** En. Sec. 14, Ch. 84, L. 1937; Sec. 4-416, R. C. M. 1947; amd. and redes. 4-2-204 by Sec. 93, Ch. 387, L. 1975; amd. Sec. 3, Ch. 496, L. 1977.

**Amendments**

The 1975 amendment renumbered this section; substituted "department of rev-

enue" or "department" for "Montana liquor control board" or "board"; and made minor changes in phraseology.

The 1977 amendment substituted "excise and license tax" for "excise tax" near the end of the last sentence; and made minor changes in phraseology and punctuation.

**4-2-205. Duplicate invoices of sales required.** The state liquor store shall upon each and every sale of liquor to any licensee, issue a duplicate invoice of the liquor purchased as provided by the department, a copy of which shall be delivered to the licensee and one copy retained at such store. The invoice shall show the date of purchase, name of employee making the sale, the quantity of each kind of liquor purchased, the price paid therefor, the name of the licensee and the number of the license, with such other information as may be required by the department. The licensee shall keep and retain his duplicate invoice of all purchases made by him from the state liquor store, which shall at all times be subject to inspection by the duly authorized officers, agents and employees of the department.

**History:** En. Sec. 16, Ch. 84, L. 1937; Sec. 4-418, R. C. M. 1947; amd. and redes. 4-2-205 by Sec. 95, Ch. 387, L. 1975.

**Amendments**

The 1975 amendment renumbered this section; substituted "department" for "board" throughout the section; and made a minor change in phraseology.

## CHAPTER 3—CONTROL OF LIQUOR, WINE AND BEER

**Section**

- 4-3-102. Liquor container must have been sealed with official seal.
- 4-3-103. Unlawful to canvass for orders for sale or purchase of liquor—advertising liquor or beer, when prohibited—exceptions.
- 4-3-104. Purchase of beer must be from licensed brewer, wholesaler or retailer.
- 4-3-105. Liquor in hotels—restrictions on.
- 4-3-201. Possession, manufacture or disposal of beer in other manner than prescribed unlawful.

- 4-3-202. Beer sale by department prohibited.
- 4-3-203. Brewers' monthly report—power of department to inspect books and premises.
- 4-3-204. Sale of beer by brewers—to whom.
- 4-3-206. Licenses of brewers—persons to whom brewers may sell beer.
- 4-3-207. Illegal acts by brewers defined.
- 4-3-208. Contracts, agreements, franchises—mandatory provisions.
- 4-3-209. Transfer of interest in business.
- 4-3-210. Contractual or franchise relationship—existence by actions.
- 4-3-211. Injunctive relief—when granted.
- 4-3-212. Agreements filed with department of revenue.
- 4-3-213. Monthly report of wholesaler.
- 4-3-214. To whom wholesaler may sell.
- 4-3-215. Unlawful for wholesaler to sell to public.
- 4-3-217. Penalty for brewer's failure to make returns—lien of taxes—enforcement—release.
- 4-3-218. Carriers' reports of beer transported.
- 4-3-219. Brewers and wholesalers not to supply fixtures, etc., to retailers, except as specified.
- 4-3-220. Financial interest in retailers prohibited.
- 4-3-221. Seven-day credit limitation.
- 4-3-222. Limitations on advertising of beer.
- 4-3-301. Purchase of beer by retailer—persons to whom beer may not be sold, delivered or given by brewers, wholesalers or retailers.
- 4-3-302. Sale of beer by retailer—consumption on premises.
- 4-3-304. Closing hours for licensed retail establishments.
- 4-3-305. Sale of alcoholic beverages during closed hours forbidden—lawful business need not be closed.
- 4-3-306. Persons to whom alcoholic beverage may not be sold or given.
- 4-3-307. Sale of liquor at less than posted price forbidden.
- 4-3-308. Refilling of liquor bottles prohibited.

#### 4-301. [Transferred.]

##### Compiler's Notes

Section 45, Ch. 387, Laws of 1975 re-numbered this section as sec. 4-1-102.

#### 4-302. (2815.11) Repealed.

##### Repeal

Section 4-302 (Sec. 2, Ch. 106, L. 1933; Sec. 1, Ch. 46, Ex. L. 1933; Sec. 6, Ch. 30, L. 1937; Sec. 2, Ch. 166, L. 1951), re-

lating to definitions for the Montana beer act, was repealed by Sec. 121, Ch. 387, Laws 1975.

#### 4-303, 4-304. [Transferred.]

##### Compiler's Notes

Sections 46 and 47, Ch. 387, Laws of

1975 renumbered these sections as secs. 4-3-304 and 4-3-305.

#### 4-305 to 4-307. (2815.12) Repealed.

##### Repeal

Sections 4-305 to 4-307 (Sec. 3, Ch. 106, L. 1933; Sec. 2, Ch. 46, Ex. L. 1933; Sec. 7, Ch. 30, L. 1937; Sec. 3, Ch. 161, L. 1943; Sec. 3, Ch. 166, L. 1951), relating to

the penalty for violation of the beer act, administration of the act by the liquor control board, and the board's power to make and enforce regulations, were repealed by Sec. 121, Ch. 387, Laws 1975.

#### 4-308. [Transferred.]

##### Compiler's Notes

Section 48, Ch. 387, Laws of 1975 re-numbered this section as sec. 4-3-202.

**4-309. [Transferred.]****Compiler's Notes**

Section 49, Ch. 387, Laws of 1975 re-numbered this section as sec. 4-3-201.

**4-310. [Transferred.]****Compiler's Notes**

Section 50, Ch. 387, Laws of 1975 re-numbered this section as sec. 4-4-101.

**4-311. [Transferred.]****Compiler's Notes**

Section 51, Ch. 387, Laws of 1975 re-numbered this section as sec. 4-3-203.

**4-312. (2815.17) Repealed.****Repeal**

Section 4-312 (Sec. 8, Ch. 106, L. 1933; Sec. 1, Ch. 220, L. 1939), relating to the

penalty for a brewer's failure to file a monthly statement, was repealed by Sec. 121, Ch. 387, Laws 1975.

**4-313. [Transferred.]****Compiler's Notes**

Section 52, Ch. 387, Laws of 1975 re-numbered this section as sec. 4-3-204.

**4-314. (2815.19) Repealed.****Repeal**

Section 4-314 (Sec. 10, Ch. 106, L. 1933), relating to sales by brewers to

the public, was repealed by Sec. 121, Ch. 387, Laws 1975.

**4-315. [Transferred.]****Compiler's Notes**

Section 120, Ch. 387, Laws of 1975 re-numbered this section as sec. 4-3-205.

**4-317. [Transferred.]****Compiler's Notes**

Section 53, Ch. 387, Laws of 1975 re-numbered this section as sec. 4-3-206.

**4-317.1. [Transferred.]****Compiler's Notes**

Section 54, Ch. 387, Laws of 1975 re-numbered this section as sec. 4-4-102.

**4-317.2 to 4-317.6. [Transferred.]****Compiler's Notes**

Section 120, Ch. 387, Laws of 1975 re-

numbered these sections as secs. 4-3-207 to 4-3-211.



**4-317.7. [Transferred.]****Compiler's Notes**

Section 55, Ch. 387, Laws of 1975 re-numbered this section as sec. 4-3-212.

**4-317.8. Repealed.****Repeal**

Section 4-317.8 (Sec. 7, Ch. 322, L. 1974), relating to the repealing clause,

was repealed by Sec. 121, Ch. 387, Laws 1975.

**4-318. [Transferred.]****Compiler's Notes**

Section 56, Ch. 387, Laws of 1975 re-numbered this section as sec. 4-4-103.

**4-319. [Transferred.]****Compiler's Notes**

Section 57, Ch. 387, Laws of 1975 re-numbered this section as sec. 4-3-213.

**4-320. [Transferred.]****Compiler's Notes**

Section 58, Ch. 387, Laws of 1975 re-numbered this section as sec. 4-6-403.

**4-321. [Transferred.]****Compiler's Notes**

Section 59, Ch. 387, Laws of 1975 re-numbered this section as sec. 4-3-214.

**4-322, 4-323. [Transferred.]****Compiler's Notes**

Section 120, Ch. 387, Laws of 1975 re-

numbered these sections as secs. 4-3-215, 4-3-216.

**4-324. [Transferred.]****Compiler's Notes**

Section 120, Ch. 387, Laws of 1975 re-numbered this section as sec. 4-1-404.

**4-325, 4-326. [Transferred.]****Compiler's Notes**

Sections 60, 61, Ch. 387, Laws of 1975

renumbered these sections as secs. 4-3-217, 4-3-218.

**4-327. [Transferred.]****Compiler's Notes**

Section 62, Ch. 387, Laws of 1975 re-numbered this section as sec. 4-4-104.

**4-328. [Transferred.]****Compiler's Notes**

Section 63, Ch. 387, Laws of 1975 re-numbered this section as sec. 4-3-302.

**4-329. [Transferred.]****Compiler's Notes**

Section 120, Ch. 387, Laws of 1975 re-numbered this section as sec. 4-3-303.

**4-330. [Transferred.]****Compiler's Notes**

Section 64, Ch. 387, Laws of 1975 re-numbered this section as sec. 4-3-301.

**4-332. [Transferred.]****Compiler's Notes**

Section 65, Ch. 387, Laws of 1975 re-numbered this section as sec. 4-4-105.

**4-333. [Transferred.]****Compiler's Notes**

Section 66, Ch. 387, Laws of 1975 re-numbered this section as sec. 4-4-201.

**4-337. (2815.40) Repealed.****Repeal**

Section 4-337 (Sec. 36, Ch. 106, L. 1933; Sec. 3, Ch. 246, L. 1947; Sec. 3, Ch. 240,

L. 1971; Sec. 4, Ch. 94, L. 1973), relating to a railroad car or carrier's license, was repealed by Sec. 121, Ch. 387, Laws 1975.

**4-338. [Transferred.]****Compiler's Notes**

Section 67, Ch. 387, Laws of 1975 re-numbered this section as sec. 4-3-104.

**4-339. (2815.42) Repealed.****Repeal**

Section 4-339 (Sec. 40, Ch. 106, L. 1933), relating to qualifications of waiters

to serve beer, was repealed by Sec. 121, Ch. 387, Laws 1975.

**4-341, 4-342. [Transferred.]****Compiler's Notes**

Sections 68, 69, Ch. 387, Laws of 1975

renumbered these sections as secs. 4-4-401, 4-4-402.

**4-344. [Transferred.]****Compiler's Notes**

Section 70, Ch. 387, Laws of 1975 re-numbered this section as sec. 4-6-301.

**4-345. (2815.48) Repealed.****Repeal**

Section 4-345 (Sec. 48, Ch. 106, L. 1933; Sec. 16, Ch. 46, Ex. L. 1933), relating to

common nuisances, was repealed by Sec. 121, Ch. 387, Laws 1975.

**4-346. [Transferred.]****Compiler's Notes**

Section 71, Ch. 387, Laws of 1975 re-numbered this section as sec. 4-6-402.

**4-347, 4-347.1. [Transferred.]****Compiler's Notes**

Sections 72, 73, Ch. 387, Laws of 1975

renumbered these sections as secs. 4-1-407, 4-1-408.

**4-348. Repealed.****Repeal**

Section 4-348 (Sec. 10, Ch. 14, L. 1941),

the repealing clause, was repealed by Sec. 58, Ch. 100, Laws 1973.

**4-349. [Transferred.]****Compiler's Notes**

Section 74, Ch. 387, Laws of 1975 re-numbered this section as sec. 4-3-219.

**4-350 to 4-356. (2815.53 to 2815.59) Repealed.****Repeal**

Sections 4-350 to 4-356 (Secs. 50 to 56, Ch. 106, L. 1933), relating to elections to

determine sale of beer in counties, were repealed by Sec. 121, Ch. 387, Laws 1975.

**4-357. Repealed.****Repeal**

Section 4-357 (Sec. 2, Ch. 121, L. 1949), relating to annual reports by the Montana

liquor control board under the Beer Act, was repealed by Sec. 1, Ch. 82, Laws 1974.

**4-358. [Transferred.]****Compiler's Notes**

Section 77, Ch. 387, Laws of 1975 re-numbered this section as sec. 4-3-222.

**4-3-101. [Transferred from 4-151.]****Compiler's Notes**

This section was originally numbered 4-151, Section 120, Ch. 387, Laws of 1975, renumbered it to appear here. Because

there has been no change in text, the section has not been reprinted here but may be found in the parent volume as 4-151.

**4-3-102. (2815.112) Liquor container must have been sealed with official seal. Except in the case of—**

- (a) liquor imported by the state, or by the department; or
- (b) liquor had and kept by a person, and in a place and manner referred to in section 4-1-202; or
- (c) beer and malt liquor, lawfully had or kept under this code; or
- (d) any liquor kept for sale by a druggist under this code no liquor shall be kept or had by any person within the state unless the package, not including a decanter or other receptacle containing the liquor for immediate consumption, in which the liquor is contained has, while containing that liquor, been sealed with the official seal prescribed under this code.

**History:** En. Sec. 53, Ch. 105, L. 1933; Sec. 4-158, R. C. M. 1947; amd. and redes. 4-3-102 by Sec. 21, Ch. 387, L. 1975.

**Amendments**

The 1975 amendment renumbered this section; substituted "department" for

"board" in subdivision (a); substituted "section 4-1-202" for "section 4-140" in subdivision (b); substituted "under this code" for "under section 4-134" in subdivision (d); deleted a subsection (2) which provided for seizure of illegal liquor; and made minor changes in phraseology.



**4-3-103.** (2815.124) **Unlawful to canvass for orders for sale or purchase of liquor—advertising liquor or beer, when prohibited—exceptions.** No person within the state shall—

(1) canvass for, receive, take or solicit orders for the purchase or sale of any spirits or wines or act as agent or intermediary for the sale or purchase of any spirits or wines or hold out himself as such agent or intermediary, unless permitted to do so under regulations that shall be promulgated by the department of revenue to govern such activities;

(2) canvass for or solicit orders for the purchase or sale of any beer or malt liquor excepting in the case of beer proposed to be sold to beer licensees, club licensees duly authorized to sell beer under the provisions of this act;

(3) exhibit, publish, or display, or permit to be exhibited, published or displayed, any form of advertisement, or any other announcement, publication or price list of or concerning liquor or where or from whom the same may be had, obtained or purchased, unless permitted so to do by the regulations of the department of revenue, and then only in accordance with such regulations;

(4) This section shall not apply—

(a) to the department of revenue, nor to any act of the department, nor to any state liquor store; nor

(b) to the receipt or transmission of a telegram or letter by any telegraph agent or operator or post-office employee in the ordinary course of his employment as such agent, operator or employee.

**History:** En. Sec. 65, Ch. 105, L. 1933; amd. Sec. 1, Ch. 140, L. 1974; amd. Sec. 1, Ch. 274, L. 1975; Sec. 4-170, R. C. M. 1947; redes. 4-3-103 by Sec. 120, Ch. 387, L. 1975.

references to the department of revenue in subdivision (4)(a) for "the board"; and made a minor change in phraseology. For prior version, see 4-170 in parent volume.

#### **Amendments**

The 1974 amendment deleted former subdivisions (2) and (3) dealing with advertising by posters, signs, and electric or illuminated signs; inserted "of the department of revenue" after "regulations" in present subdivision (3); substituted the

The 1975 amendment added "unless permitted to do so under regulations that shall be promulgated by the department of revenue to govern such activities" to subdivision (1); redesignated former subdivision (1)(a) as (2) and renumbered the remaining subdivisions accordingly.

**4-3-104.** (2815.41) **Purchase of beer must be from licensed brewer, wholesaler or retailer.** It shall be unlawful for the operator of any common carrier, or its employees, to make sale of or dispose of any beer or malt liquors except such as shall have been lawfully acquired or purchased from a brewer or wholesaler duly licensed.

**History:** En. Sec. 37, Ch. 106, L. 1933; Sec. 4-338, R. C. M. 1947; amd. and redes. 4-3-104 by Sec. 67, Ch. 387, L. 1975.

#### **Amendments**

The 1975 amendment renumbered this

section; deleted reference to railroad train before "common carrier"; deleted "or retailer" after "wholesaler" near the end of the section; and made minor changes in phraseology.

**4-3-105.** (2815.123) **Liquor in hotels—restrictions on.** Except in the case of liquor or beer kept or consumed in premises for which a license

has been granted, under the law, and which form a part of a hotel, no person—

(a) shall keep or consume liquor in any part of a hotel other than a private guest room;

(b) shall keep or have any liquor in any room in a hotel unless he is a bona fide guest of the hotel and is duly registered in the office of the hotel as an occupant of that room.

**History:** En. Sec. 64, Ch. 105, L. 1933; amd. Sec. 1, Ch. 152, L. 1974; Sec. 4-169, R. C. M. 1947; redes. 4-3-105 by Sec. 120, Ch. 387, L. 1975.

#### Amendments

The 1974 amendment inserted "liquor or" before "beer" in the first sentence; deleted "beer" before "license" in the first sentence; deleted a clause before "no person" in the first sentence reading "and except in the case of liquor kept and consumed

pursuant to a special permit granted under the provisions of clause (c) of subsection (2) of section 4-123"; deleted from the end of subdivision (b) "and has baggage and personal effects belonging to him in the hotel"; and deleted a final paragraph which read "Provided that there shall not be kept or had in any such room a greater quantity of liquor than one person is entitled to acquire at one time under an individual permit."

**4-3-201. (2815.14) Possession, manufacture or disposal of beer in other manner than prescribed unlawful.** It shall be unlawful to manufacture or sell, or dispose of, or possess for the purpose of sale, beer of any kind or character of an alcoholic content greater than herein prescribed, or other than in the manner permitted by this code.

**History:** En. Sec. 5, Ch. 106, L. 1933; Sec. 4-309, R. C. M. 1947; amd. and redes. 4-3-201 by Sec. 49, Ch. 387, L. 1975.

#### Amendments

The 1975 amendment renumbered this section; and made a minor change in phraseology.

**4-3-202. (2815.13) Beer sale by department prohibited.** The sale of beer by the department is hereby prohibited.

**History:** En. Sec. 4, Ch. 106, L. 1933; amd. Sec. 1, Ch. 89, L. 1937; amd. Sec. 1, Ch. 186, L. 1947; Sec. 4-308, R. C. M. 1947; amd and redes. 4-3-202 by Sec. 48, Ch. 387, L. 1975.

#### Amendments

The 1975 amendment renumbered this section; and rewrote the entire section which formerly permitted the liquor board to sell beer containing less than 4% alcohol. For prior version, see sec. 4-308 in the parent volume.

**4-3-203. (2815.16) Brewers' monthly report—power of department to inspect books and premises.** Every brewer, licensed to do business in this state, shall, on or before the fifteenth day of each month, make an exact return to the department of the amount of beer manufactured by him and the amount sold by him in the previous month, and of his inventory, in the manner and form as shall be prescribed by the department, and the department shall have the right at any time to make an examination of any brewer's books and of his premises, and otherwise check the accuracy of any such return, or to check the alcoholic content of beer manufactured by him.

**History:** En. Sec. 7, Ch. 106, L. 1933; Sec. 4-311, R. C. M. 1947; amd. and redes. 4-3-203 by Sec. 51, Ch. 387, L. 1975.

#### Amendments

The 1975 amendment renumbered this section; and substituted "department" for "board" throughout the section.

**4-3-204. (2815.18) Sale of beer by brewers—to whom.** It shall be lawful for any brewer to sell or dispose of beer manufactured by him to any licensed wholesaler.

**History:** En. Sec. 9, Ch. 106, L. 1933; amd. Sec. 3, Ch. 46, Ex. L. 1933; Sec. 4-313, R. C. M. 1947; amd. and redes. 4-3-204 by Sec. 52, Ch. 387, L. 1975.

#### Amendments

The 1975 amendment renumbered this section; and substituted "licensed wholesaler" for "wholesaler, retailer, club or common carrier holding and having a license under this act."

### 4-3-205. [Transferred from 4-315.]

#### Compiler's Notes

This section was originally numbered 4-315. Section 120, Ch. 387, Laws of 1975, renumbered it to appear here. Because

there has been no change in text, the section has not been reprinted here but may be found in the parent volume as 4-315.

**4-3-206. (2815.22) Licenses of brewers—persons to whom brewers may sell beer.** Any brewer duly licensed as such by the United States of America, who manufactures beer in the state of Montana, upon payment of the annual license fee imposed by section 4-4-401 and upon presenting satisfactory evidence to the department as required by section 4-4-101, shall be licensed by the department in accordance with the provisions of this code and such regulations as may be prescribed by the department, to sell and deliver:

- (a) Beer to a vendor;
- (b) Beer to any licensees who are entitled to purchase beer from a brewer under this act; or
- (c) Beer to the public, subject to the limitations and restrictions contained in this act; or to do any one or more of such acts of sale and delivery of beer.

**History:** En. Sec. 13, Ch. 106, L. 1933; amd. Sec. 4, Ch. 46, Ex. L. 1933; amd. Sec. 4, Ch. 166, L. 1951; amd. Sec. 1, Ch. 135, L. 1959; amd. Sec. 1, Ch. 296, L. 1969; amd. Sec. 1, Ch. 421, L. 1971; Sec. 4-317, R. C. M. 1947; amd. and redes. 4-3-206 by Sec. 53, Ch. 387, L. 1975.

#### Amendments

The 1969 amendment added to the end of subsection (2) a proviso increasing the tax from \$1.50 to \$3.00 per barrel for the biennium ending June 30, 1971.

The 1971 amendment made the 1969 change permanent by changing the tax specified in subsection (2) from \$1.50 to \$3.00 and deleting the proviso added by the 1969 amendment.

The 1975 amendment renumbered this section; substituted "section 4-4-401" for "section 4-341" and for "section 4-310" in the introductory paragraph; substituted "department" for "board" throughout the section; and deleted a subsection (2) which imposed a barrelage tax on beer.

**4-3-207. Illegal acts by brewers defined.** It is unlawful for any brewer or any officer, agent or representative of any brewer:

(1) to coerce, or attempt to coerce, or persuade any person licensed to sell beer at wholesale, to enter into any agreement or to take any action which would violate or tend to violate any of the laws of this state, or any rules promulgated by the department of revenue;

(2) to sell its products in the state without a written contract which conforms to the provisions of this act with each appointed licensed wholesale distributor;



(3) to designate or allow more than one (1) wholesale distributor to sell or distribute a specific brand of the brewer's products to retail licensees in the same area, provided that nothing herein shall prohibit the brewer from designating more than one (1) wholesale distributor to sell or distribute different brands of the same manufacturer to retail licensees in the same area; and

(4) to cancel or terminate except for just cause or in accordance with the current terms and standards established by the brewer then equally applicable to all wholesalers, any agreement or contract, written or oral, or the franchise of any wholesaler existing on January 1, 1974, or thereafter entered into, to sell beer manufactured by the brewer. A brewer may, notwithstanding the preceding sentence, make reasonable classifications among wholesalers. If a brewer cancels or terminates a wholesaler's franchise, the brewer has the burden of proving the classification was reasonable and not arbitrary. After its effective date, this act shall be a part of any franchise, contract or agreement or understanding, whether written or oral, between any wholesaler of beer licensed to do business in this state and any manufacturer doing business with the licensed wholesaler just as though the provisions had been specifically agreed upon between the wholesaler and the manufacturer.

**History:** En. 4-317.2 by Sec. 1, Ch. 322, L. 1974; Sec. 4-317.2, R. C. M. 1947; redes. 4-3-208 by Sec. 120, Ch. 387, L. 1975.

#### **Title of Act**

An act making certain acts of brewers illegal; providing mandatory contract pro-

visions; allowing transfers of interest in wholesaler business; delineating when a contractual relationship exists; granting injunctive relief; and providing that all agreements, contracts or franchises be filed with the department of revenue.

**4-3-208. Contracts, agreements, franchises—mandatory provisions.** All contracts, agreements or franchises between a brewer and a wholesaler shall specifically set forth or contain the following:

(1) The brewer, or any officer, agent or representative of any brewer, and the wholesaler involved mutually shall determine the size or extent of the area in which the wholesaler may sell or distribute the products of the brewer to the retail licensees. Said territory will be the territory agreed upon between the wholesaler and brewer, and may not be changed without the mutual consent of both the wholesaler and brewer.

(2) The agreed upon brands of the brewer to be sold by the wholesaler.

(3) The brewer recognizes that the wholesaler is free to manage his business in the manner the wholesaler deems best, and that this prerogative vests in the wholesaler the exclusive right to establish selling prices, to select the brands he wishes to handle, to determine the effort and resources the wholesaler will exert to develop and promote the sale of the brewer's products handled by the wholesaler.

(4) A procedure for the review of alleged wholesaler deficiencies, including the submission in writing to the wholesaler by the brewer of said deficiencies, if the deficiencies are susceptible of correction and if the wholesaler desires to correct said deficiencies, a reasonable period of time shall

be given the wholesaler for rectification of said deficiencies prior to any notice of intent to terminate.

(5) A termination clause providing that the brewer shall deliver, in writing, to the wholesaler a sixty (60) day notice of intent to terminate the agreement, contract or franchise.

History: En. 4-317.3 by Sec. 2, Ch. 322, redes. 4-3-203 by Sec. 120, Ch. 387, L. 1974; Sec. 4-317.3, R. C. M. 1947; 1975.

**4-3-209. Transfer of interest in business.** A wholesaler shall have the right to sell or transfer his business or an interest in his business to any person, or to one or more members of his family, or heirs or legatees, whether the wholesaler operates as an individual, a partnership, or corporation: Provided, however, the consent of the brewer in writing is required for such transferee to continue as a wholesaler of said brewer, which consent shall consider the personal, financial and managerial responsibilities and capabilities of such transferee and which consent shall not unreasonably be withheld.

History: En. 4-317.4 by Sec. 3, Ch. 322, redes. 4-3-209 by Sec. 120, Ch. 387, L. 1974; Sec. 4-317.4, R. C. M. 1947; 1975.

**4-3-210. Contractual or franchise relationship—existence by actions.** The doing or accomplishing of any of the following acts constitutes prima facie evidence of a contractual or franchise relationship within the contemplation of this act, as between a licensed wholesaler and a brewer:

(1) The shipment, the preparation for shipment or acceptance of any order by any brewer or its agent for any beer to a licensed wholesaler within this state.

(2) The payment by any licensed wholesaler within this state or the acceptance of payment by any brewer or its agent for the shipment of an order of beer intended for sale within this state.

History: En. 4-317.5 by Sec. 4, Ch. 322, L. 1974; Sec. 4-317.5, R. C. M. 1947; redes. 4-3-210 by Sec. 120, Ch. 387, L. 1975.

**4-3-211. Injunctive relief—when granted.** Any court of competent jurisdiction may enjoin the cancellation or termination of a franchise or agreement between a wholesaler and a brewer at the instance of a wholesaler who is or would be adversely affected by the cancellation or termination. In granting an injunction, the court shall provide that the brewer shall not supply the customers or territory of the wholesaler who is servicing the territory or customers through other distributors or means while the injunction is in effect.

History: En. 4-317.6 by Sec. 5, Ch. 322, L. 1974; Sec. 4-317.6, R. C. M. 1947; redes. 4-3-211 by Sec. 120, Ch. 387, L. 1975.

**4-3-212. Agreements filed with department of revenue.** An exact copy of all agreements, contracts or franchises between a brewer and a wholesaler shall be filed with the department of revenue as a public document and shall be available to any of the parties to a dispute. The

department, upon the instigation of any action in a court of record, shall file an exact certified copy of the agreement with the court for the court's consideration in determining any matter before it. Any contracts, agreements or franchises not upon record with the department shall not be considered by any court as having any force or effect.

**History:** En. 4-317.7 by Sec. 6, Ch. 322, L. 1974; Sec. 4-317.7, R. C. M. 1947; amd. and redes. 4-3-212 by Sec. 55, Ch. 387, L. 1975.

#### Amendments

The 1975 amendment renumbered this section; and substituted "department" for "board" near the end of the section.

**4-3-213. (2815.24) Monthly report of wholesaler.** Every wholesaler, licensed to do business in this state, as herein provided, shall on or before the fifteenth day of each month, make an exact return to the department of the amount of beer manufactured in this state, sold and delivered by him, and also of the amount of beer manufactured in places outside of the state, sold and delivered by him, during the previous month, and of his inventory in the manner and form as shall be prescribed by the department, and the department shall have the right at any time to make an examination of the said wholesaler's books and of his premises, and otherwise check the accuracy of such return or to check the alcoholic content of beer which he may have on hand.

**History:** En. Sec. 15, Ch. 106, L. 1933; Sec. 4-319, R. C. M. 1947; amd. and redes. 4-3-213 by Sec. 57, Ch. 387, L. 1975.

#### Amendments

The 1975 amendment renumbered this section; and substituted "department" for "board" throughout the section.

**4-3-214. (2815.26) To whom wholesaler may sell.** It shall be lawful for any wholesaler to sell and deliver beer purchased or acquired by him to a wholesaler, retailer, or to a common carrier, holding and having a license under this act.

**History:** En. Sec. 17, Ch. 106, L. 1933; amd. Sec. 6, Ch. 46, Ex. L. 1933; Sec. 4-321, R. C. M. 1947; amd. and redes. 4-3-214 by Sec. 59, Ch. 387, L. 1975.

#### Amendments

The 1975 amendment renumbered this section; and deleted "club" after "retailer."

**4-3-215. (2815.27) Unlawful for wholesaler to sell to public.** It shall be unlawful for any wholesaler to give, sell, deliver or distribute any beer purchased or acquired by him to the public.

**History:** En. Sec. 18, Ch. 109, L. 1933; amd. Sec. 7, Ch. 46, Ex. L. 1933; amd. Sec. 1, Ch. 274, L. 1973; Sec. 4-322, R. C. M. 1947; redes. 4-3-215 by Sec. 120, Ch. 387, L. 1975.

#### Amendments

The 1973 amendment substituted this section for a section permitting any wholesaler to sell, deliver or distribute beer to the public in original packages of not less than two gallons, to be taken from the premises in unbroken packages for consumption off the premises.

### 4-3-216. [Transferred from 4-323.]

#### Compiler's Notes

This section was originally numbered 4-323. Section 120, Ch. 387, Laws of 1975, renumbered it to appear here. Because

there has been no change in text, the section has not been reprinted here but may be found in the parent volume as 4-323.



**4-3-217. Penalty for brewer's failure to make returns—lien of taxes—enforcement—release.** If any brewer subject to the payment of the tax provided for in section 4-1-405 or any wholesaler subject to the payment of the tax provided for in section 4-1-404, shall fail, neglect or refuse to make any return required by this code, or shall fail to make payment of such tax within the time herein provided, the department shall, forthwith after such time has expired, proceed to inform itself as best it may regarding the matters and things required to be set forth in such return and from such information as it may be able to obtain, to make a statement showing such matters and things and determine and fix the amount of such tax due the state from such delinquent brewer or wholesaler and shall add thereto a penalty of five per cent (5%) thereof for the first failure, willful neglect or refusal; ten per cent (10%) for the second; fifteen per cent (15%) for the third; and twenty-five per cent (25%) for the fourth, and each subsequent failure, neglect or refusal, which shall be in addition to the five per cent (5%) penalty hereinbefore provided for nonpayment of such tax within the time hereinbefore provided. Said tax and the penalties added thereto shall bear interest at the rate of one per cent (1%) per month from the date such returns should have been made and said tax paid. The department shall then proceed to collect such tax with penalties and interest. Upon request of the department it shall be the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction an action to collect such tax. All taxes due from any brewer or wholesaler under the provisions of this code, together with all penalties and interest thereon, shall be a lien upon any and all property of such brewer or wholesaler upon the filing by the department of a duplicate copy of the statement so made by the department, or a certified copy of any return filed with the department, in the office of the county clerk of the county where such property is situated, which lien shall have precedence over any other claim, lien or demand thereafter filed or recorded and may be enforced in the name of the state of Montana in the same manner as other liens are enforced by law. No action shall be maintained to enjoin the collection of such tax or any part thereof. When the amount due the state is paid in full and before the entry of foreclosure decree, the department shall release the said lien by filing in the office of the county clerk wherein is filed the said lien a written release thereof. At any time prior to the payment of said taxes, penalty and interest, before the entry of foreclosure decree, the department may release from the operation of said lien a part of said property to enable the brewer or wholesaler to mortgage, sell or otherwise dispose of the same in order to procure funds with which to pay said taxes, penalty and interest, provided there remains, in the judgment of the department, sufficient property subject to said lien to ensure the payment of the whole of said unpaid taxes, penalty and interest.

**History:** En. Sec. 3, Ch. 220, L. 1939; Sec. 4-325, R. C. M. 1947; amd. and redes. 4-3-217 by Sec. 60, Ch. 387, L. 1975.

#### **Amendments**

The 1975 amendment renumbered this

section; substituted "section 4-1-405" for "subdivision (3) [(2)] of section 4-317" near the beginning of the section; substituted "section 4-1-404" for "section 4-324" near the beginning of the section; substituted "department" for "board"

throughout the section; and substituted "this code" for "Montana Beer Act" throughout the section.

**4-3-218. Carriers' reports of beer transported.** Every railroad and every motor carrier transporting beer manufactured out of this state from points without this state and delivering the same to points within this state shall, on or before the fifteenth day of each month, make an exact return to the department of the amount of such beer so transported and delivered by such railroad or motor carrier during the previous month, and shall state in such return the name and address of the consignor, the name and address of the consignee, the date of delivery, and the amount delivered.

**History:** En. Sec. 4, Ch. 220, L. 1939; Sec. 4-326, R. C. M. 1947; amd. and redes. 4-3-218 by Sec. 61, Ch. 387, L. 1975.

**Amendments**

The 1975 amendment renumbered this section; and substituted "department" for "board."

**4-3-219. (2815.51) Brewers and wholesalers not to supply fixtures, etc., to retailers, except as specified.** (a) It shall be unlawful for any brewer or wholesaler to lease, furnish, give or pay for any premises, furniture, fixtures, equipment, signs, or any other advertising matter or any other property to any retail licensee, used or to be used in the dispensation of beer in and about the interior or exterior of the place of business of any licensed retailer or furnish, give or pay for any repairs, improvements, painting or decorating on or within such premises; provided, however, that it shall be lawful for a brewer or wholesaler to furnish, give or loan to a retail licensee:

1. Bottle openers, can openers and trays, with or without advertising matter thereon;

2. Advertising matter or novelties, of a value of not to exceed fifteen dollars (\$15) in any calendar year, to any one (1) retailer for display use on the interior of said retailer's place of business; and

3. Not more than two (2) illuminated or electrical signs, each of not more than six hundred thirty (630) square inches in area, which signs may bear the name, brand name, trade name, trade-mark or other designation indicating the name of the manufacturer, and the place of manufacture, of beer, for display by the retail licensee on and within the interior of his place of business, or in the windows inside the place of business of the licensed retailer, and only if the particular brand of beer so advertised on such signs is actually available for sale on the licensee's premises, at the time of such display.

4. Maintenance or repair services on draft beer equipment to keep it sanitary and in good working condition.

**History:** En. Sec. 18, Ch. 46, Ex. L. 1933; amd. Sec. 10, Ch. 166, L. 1951; amd. Sec. 1, Ch. 51, L. 1955; amd. Sec. 1, Ch. 110, L. 1959; amd. Sec. 1, Ch. 49, L. 1967; Sec. 4-349, R. C. M. 1947; amd. and redes. 4-3-219 by Sec. 74, Ch. 387, L. 1975.

**Amendments**

The 1975 amendment renumbered this



section; added subdivision (a)4; deleted former subsection (b) which prohibited loans or financial transactions between wholesalers or brewers and retailers; and

deleted former subsection (c) which provided for cash payment by retailer within one week of delivery. For prior version, see sec. 4-349 in parent volume.

**4-3-220. Financial interest in retailers prohibited.** No brewer or wholesaler shall advance or loan money to, or furnish money for, or pay for or on behalf of any retailer, for any license or tax which may be required to be paid for any retailer, and no brewer or wholesaler shall be financially interested, either directly or indirectly, in the conduct or operation of the business of a retailer, as herein defined. A brewer or wholesaler shall be deemed to have such a financial interest within the meaning of this section if (1) such brewer or wholesaler owns or holds any interest in, or a lien or mortgage against the retailer or his premises; or (2) if such brewer or wholesaler is under any contract with a retailer concerning future purchases and/or sale of merchandise by one from, or to the other; (3) if any retailer holds an interest as a stockholder, or otherwise, in the business of the wholesaler.

History: En. 4-3-220 by Sec. 75, Ch. 387, L. 1975.

**4-3-221. Seven-day credit limitation.** No sale or delivery of beer shall be made to any retail licensee, except for cash paid within seven (7) days after the delivery thereof, and in no event shall any brewer or wholesaler extend more than seven (7) days' credit on account of such beer to a retail licensee, nor shall any retail licensee accept or receive delivery of such beer without agreement to pay in cash therefor within seven (7) days from delivery thereof. A correctly dated check which is honored upon presentment shall be considered as cash within the meaning of this code. Any extension or acceptance of credit in violation hereof shall be regarded and construed as rendering or receiving financial assistance, and the licenses of both brewers, wholesalers and retail licensees involved in violation hereof shall be suspended or revoked, as determined by the department in its discretion.

History: En. 4-3-221 by Sec. 76, Ch. 387, L. 1975.

**4-3-222. Limitations on advertising of beer.** It shall be lawful to advertise beer containing not more than seven per centum (7%) of alcohol by weight, as herein defined and regulated, subject to (a) the restrictions on brewers contained in section 4-3-219 of this code, and subject to (b) the restrictions on retailers, to wit: No retail licensee shall display, or permit to be displayed, on the exterior portion or surface of such retailer's place of business, or on the exterior portion or surface of any building of which said place of business is a part, or on any premises adjacent thereto, whether any of such premises be owned or leased by the retailer, any sign, poster or advertisement bearing the name, brand name, trade name, trade-mark or other designation indicating the manufacturer, brewer, wholesaler or place of manufacture, of any beer whatsoever.

History: En. Sec. 11, Ch. 166, L. 1951; Sec. 4-358, R. C. M. 1947; amd. and redes. 4-3-222 by Sec. 77, Ch. 387, L. 1975.

#### Amendments

The 1975 amendment renumbered this section; increased the lawful alcoholic con-



tent from 4% to 7%; substituted "section 4-3-219 of this code" for "section 4-349 of this act"; and deleted "under the Montana Beer Act" after "licensee" near the middle of the section.

**4-3-301. (2815.33) Purchase of beer by retailer—persons to whom beer may not be sold, delivered or given by brewers, wholesalers or retailers.** It shall be unlawful for a licensed retailer to purchase or acquire beer from anyone except a brewer or wholesaler licensed under the provisions of this code.

It shall be unlawful for any brewer, wholesaler or retailer, his or her employee or employees to sell, deliver or give away, or cause or permit to be sold, delivered or given away, any beer to:

1. Any person under the age of eighteen (18) years;
2. Any intoxicated person or any person actually, apparently or obviously intoxicated.

**History:** En. Sec. 31, Ch. 106, L. 1933; amd. Sec. 11, Ch. 46, Ex. L. 1933; amd. Sec. 7, Ch. 166, L. 1951; amd. Sec. 2, Ch. 240, L. 1971; amd. Sec. 3, Ch. 94, L. 1973; Sec. 4-330, R. C. M. 1947; amd. and redes. 4-3-301 by Sec. 64, Ch. 387, L. 1975.

#### Amendments

The 1971 amendment reduced the age specified in item 1 of the second paragraph from 21 to 19 years; and deleted "Indian" after "Any minor" near the beginning of the second sentence of the third paragraph.

The 1973 amendment reduced the age specified in item 1 of the second paragraph from nineteen to eighteen years.

The 1975 amendment renumbered this section; substituted "licensed retailer" for "such retailer" in the introductory paragraph; deleted items 3 and 4 of the second paragraph which prohibited sales to habitual drunkards or interdicted persons; deleted provisions for penalties for violation; and made minor changes in phraseology. For prior version, see sec. 4-330 in parent volume, and 1971 amendment note.

**4-3-302. (2815.31) Sale of beer by retailer—consumption on premises.** It shall be lawful for such retailer to sell and serve beer either on draught or in containers to the public to be consumed on the premises of such retailer.

**History:** En. Sec. 29, Ch. 106, L. 1933; Sec. 4-328, R. C. M. 1947; amd. and redes. 4-3-302 by Sec. 63, Ch. 387, L. 1975.

#### Amendments

The 1975 amendment renumbered this section; and substituted "containers" for "bottles."

### 4-3-303. [Transferred from 4-329.]

#### Compiler's Notes

This section was originally numbered 4-329. Section 120, Ch. 387, Laws of 1975, renumbered it to appear here. Because

there has been no change in text, the section has not been reprinted here but may be found in the parent volume as 4-329.

**4-3-304. Closing hours for licensed retail establishments.** Hereafter all licensed establishments wherein alcoholic beverages are sold, offered for sale or given away at retail shall be closed during the following hours:

(a) On any day between two a.m. and eight a.m.; provided, however, that when any municipal incorporation has by ordinance further restricted the hours of sale of alcoholic beverages, then the sale of alcoholic beverages is prohibited within the limits of any such city or town during the time such sale is prohibited by this code and in addition thereto during the hours that it is prohibited by such ordinance. During such hours

all persons except the owner and employees of such licensed establishments shall be excluded therefrom except as provided in section 4-3-305.

**History:** En. Sec. 1, Ch. 161, L. 1943; amd. Sec. 1, Ch. 162, L. 1959; amd. Sec. 1, Ch. 242, L. 1973; Sec. 4-303, R. C. M. 1947; amd. and redes. 4-3-304 by Sec. 46, Ch. 387, L. 1975.

#### Compiler's Notes

As amended by Sec. 46, Ch. 387, Laws of 1975, this section contained no subdivision (b).

#### Amendments

The 1973 amendment deleted subdivision (c) which prohibited the sale of beer during the hours when the polls are open

for a state or national general or primary election.

The 1975 amendment renumbered this section; substituted "alcoholic beverages" for "beer" throughout the section; deleted "as defined by subsection (b) of section 4-302 is" before "sold" in the introductory paragraph; deleted former subdivision (a) which provided for Sunday closing from 2:00 a.m. to 1:00 p.m.; redesignated former subdivision (b) as (a); added the second sentence to subdivision (a); and made minor changes in phraseology.

### DECISIONS UNDER FORMER LAW

#### Exclusive Jurisdiction

Where there was alleged violation of city ordinance restricting hours of sale but same was not violation of state law,

police court in city had exclusive jurisdiction over matter. State ex rel. Goodwin v. District Court, — M —, 536 P 2d 766.

**4-3-305. Sale of alcoholic beverages during closed hours forbidden—lawful business need not be closed.** During the hours when the said licensed establishments where alcoholic beverages are sold at retail are required by this code to be closed, it shall be unlawful to sell, offer for sale or give away any such alcoholic beverages, and during such hours all persons save employees of such licensed establishments shall be excluded therefrom; provided, however, that when a licensed establishment is operated in conjunction with a hotel, restaurant, bus depot, railway terminal, or other lawful business other than that of the sale of intoxicating liquor or beer, then such other lawful business need not be closed, but only the part thereof where such beer or liquor is sold.

**History:** En. Sec. 3, Ch. 161, L. 1943; Sec. 4-304, R. C. M. 1947; amd. and redes. 4-3-305 by Sec. 47, Ch. 387, L. 1975.

#### Amendments

The 1975 amendment renumbered this section; substituted "alcoholic beverages" for "beer" in two places; and made minor changes in phraseology.

### **4-3-306. Persons to whom alcoholic beverage may not be sold or given.**

(1) No licensee or his or her employee or employees, nor any other person, shall sell, deliver, or give away or cause or permit to be sold, delivered or given away any alcoholic beverage to:

(a) Any person under the age of eighteen (18) years.

(b) Any intoxicated person or any person actually, apparently or obviously intoxicated.

(2) Any minor, or other person who knowingly misrepresents his or her qualifications for the purpose of obtaining an alcoholic beverage from such licensee shall be equally guilty with said licensee and shall, upon conviction thereof, be subject to the penalty provided in section 94-5-610 provided, however, that nothing herein contained shall be construed as authorizing or permitting the sale of an alcoholic beverage to any person in violation of any federal law.

**History:** En. Sec. 11, Ch. 84, L. 1937; amd. Sec. 3, Ch. 221, L. 1939; amd. Sec. 1, Ch. 71, L. 1953; amd. Sec. 4, Ch. 240, L. 1971; amd. Sec. 5, Ch. 94, L. 1973; Sec. 4-413, R. C. M. 1947; amd. and redes. 4-3-306 by Sec. 91, Ch. 387, L. 1975.

#### Amendments

The 1971 amendment reduced the age specified in subdivision (1)(a) from 21 to 19 years.

The 1973 amendment reduced the age specified in subdivision (1)(a) from nineteen to eighteen years.

The 1975 amendment renumbered this section; substituted references to alcoholic beverages for "liquor, beer or wine" throughout the section; redesignated former subdivisions 1 and 2 as subdivisions (a) and (b) of subsection (1); deleted former subdivisions 3 and 4, referring to habitual drunkards and interdicted persons; redesignated former subdivision 5 as subsection (2); and substituted "section 94-5-610" for "section 4-439" in subsection (2). For prior version see 4-413 in parent volume.

**4-3-307. Sale of liquor at less than posted price forbidden.** It shall be unlawful for any licensee under the provisions of this code to resell any liquor purchased by such licensee from a state liquor store or the state of Montana for a sum less than the posted price established by the said store and paid by the licensee therefor.

**History:** En. Sec. 19, Ch. 84, L. 1937; Sec. 4-421, R. C. M. 1947; amd. and redes. 4-3-307 by Sec. 98, Ch. 387, L. 1975.

#### Amendments

The 1975 amendment renumbered this section; inserted "or the state of Montana" after "state liquor store"; and made a minor change in phraseology.

**4-3-308. Refilling of liquor bottles prohibited.** No person who sells, or offers for sale, liquor, nor the agent or employee of such person, may—

(1) place in any liquor bottle any liquor whatsoever other than those contained in such bottle at the time of stamping by the federal government; or

(2) possess any liquor bottle in which any liquor has been placed in violation of subsection (1); or

(3) by the addition of any substance whatsoever to any liquor bottle, in any manner alter or increase any portion of the original contents contained in such bottle at the time of stamping by the federal government; or

(4) possess any liquor bottle, any portion of the contents of which has been altered or increased in violation of subsection (3); except that this section does not prohibit any reuse of liquor bottles which is permitted under laws or regulations of the federal government.

**History:** En. 4-3-308 by Sec. 117, Ch. 387, L. 1975.

## CHAPTER 4—LICENSE ADMINISTRATION

### Section

- 4-4-101. Applications for sale or manufacture of beer—qualifications of applicant.
- 4-4-102. Right of brewers to maintain and operate storage depots—annual licenses.
- 4-4-103. Wholesalers' licenses — application for and issuance — subwarehouse — imported beer handled through warehouse or subwarehouse.
- 4-4-104. Retailers' license—application and issuance—display required—check of alcoholic content by department.
- 4-4-105. Special permits to sell alcoholic beverages—application and issuance.
- 4-4-107. Proximity to churches and schools restricted.



- 4-4-108. License as privilege—criteria for decision on application.
- 4-4-109. Passenger carrier licenses.
- 4-4-110. Payment of liquor taxes by passenger carriers.
- 4-4-111. Other accounting methods—forms.
- 4-4-201. Issuance of retail beer licenses—limit on number of retail licenses—wine license amendments—off-premises consumption.
- 4-4-202. All-beverages license quota.
- 4-4-203. Lapse of license for nonuse.
- 4-4-204. Resort licenses.
- 4-4-205. Department of revenue determination required.
- 4-4-206. Contents of license—posting—privilege—transfer—expiration.
- 4-4-207. Limit one license to person—business in name of licensee.
- 4-4-301. Application for all-beverages license—penalty for false statements.
- 4-4-302. Notice of application—publication—protest.
- 4-4-303. Investigation of application.
- 4-4-304. Fingerprints required of licensees.
- 4-4-305. Holders of security interests.
- 4-4-401. Fees for licenses.
- 4-4-402. Denial of application for license or renewal—suspension or revocation—actions.
- 4-4-403. Census of population.
- 4-4-404. Fee for and expiration of licenses.
- 4-4-405. Renewal of suspended licenses.
- 4-4-406. City and county licenses—fees.
- 4-4-407. Penalty for sale of alcoholic beverage without license.

#### 4-401. [Transferred.]

##### Compiler's Notes

Section 78, Ch. 387, Laws of 1975 re-numbered this section as sec. 4-1-103.

#### 4-402. Repealed.

##### Repeal

Section 4-402 (Sec. 2, Ch. 84, L. 1937), relating to retail liquor license act defini-

tions, was repealed by Sec. 121, Ch. 387, Laws 1975.

#### 4-403. [Transferred.]

##### Compiler's Notes

Section 79, Ch. 387, Laws of 1975 re-numbered this section as sec. 4-4-202.

#### 4-403.1. [Transferred.]

##### Compiler's Notes

Section 120, Ch. 387, Laws of 1975 re-numbered this section as sec. 4-4-205.

#### 4-404. [Transferred.]

##### Compiler's Notes

Section 119, Ch. 387, Laws of 1975 re-numbered this section as sec. 4-4-403.

#### 4-405. Repealed.

##### Repeal

Section 4-405 (Sec. 1, Ch. 235, L. 1943), relating to a temporary, half-year license

fee for beer or liquor sales in 1944, was repealed by Sec. 121, Ch. 387, Laws 1975.

**4-406. [Transferred.]****Compiler's Notes**

Section 82, Ch. 387, Laws of 1975 renumbered this section as sec. 4-4-404.

**4-407, 4-407.1. [Transferred.]****Compiler's Notes**

Sections 83, 84, Ch. 387, Laws of 1975

renumbered these sections as secs. 4-4-301, 4-4-302.

**4-408. [Transferred.]****Compiler's Notes**

Section 85, Ch. 387, Laws of 1975 renumbered this section as sec. 4-4-308.

**4-408.1. [Transferred.]****Compiler's Notes**

Section 86, Ch. 387, Laws of 1975 renumbered this section as sec. 4-4-304.

**4-408.2. [Transferred.]****Compiler's Notes**

Section 120, Ch. 387, Laws of 1975 renumbered this section as sec. 4-4-305.

**4-409. Repealed.****Repeal**

Section 4-409 (Sec. 7, Ch. 84, L. 1937; Sec. 1, Ch. 179, L. 1947), relating to li-

censes to sell liquor in railroad dining and buffet cars, was repealed by Sec. 121, Ch. 387, Laws 1975.

**4-409.1. [Transferred.]****Compiler's Notes**

Section 87, Ch. 387, Laws of 1975 renumbered this section as sec. 4-4-106.

**4-410, 4-411. [Transferred.]****Compiler's Notes**

Sections 88, 89, Ch. 387, Laws of 1975

renumbered these sections as secs. 4-4-206, 4-4-207.

**4-412. [Transferred.]****Compiler's Notes**

Section 90, Ch. 387, Laws of 1975 renumbered this section as sec. 4-4-108.

**4-413. [Transferred.]****Compiler's Notes**

Section 91, Ch. 387, Laws of 1975 renumbered this section as sec. 4-3-306.

**4-414. Repealed.****Repeal**

Section 4-414 (Sec. 12, Ch. 84, L. 1937; Sec. 2, Ch. 162, L. 1959; Sec. 1, Ch. 296,

L. 1973), relating to hours for sale of liquor, was repealed by Sec. 121, Ch. 387, Laws 1975.

**4-415. [Transferred.]**

**Compiler's Notes**

Section 92, Ch. 387, Laws of 1975 re-numbered this section as sec. 4-4-107.

**4-416. [Transferred.]**

**Compiler's Notes**

Section 93, Ch. 387, Laws of 1975 re-numbered this section as sec. 4-2-204.

**4-417. [Transferred.]**

**Compiler's Notes**

Section 94, Ch. 387, Laws of 1975 re-numbered this section as sec. 4-1-403.

**4-418. [Transferred.]**

**Compiler's Notes**

Section 95, Ch. 387, Laws of 1975 re-numbered this section as sec. 4-2-205.

**4-419. [Transferred.]**

**Compiler's Notes**

Section 96, Ch. 387, Laws of 1975 re-numbered this section as sec. 4-6-102.

**4-420. [Transferred.]**

**Compiler's Notes**

Section 97, Ch. 387, Laws of 1975 re-numbered this section as sec. 4-4-407.

**4-421. [Transferred.]**

**Compiler's Notes**

Section 98, Ch. 387, Laws of 1975 re-numbered this section as sec. 4-3-307.

**4-422. [Transferred.]**

**Compiler's Notes**

Section 99, Ch. 387, Laws of 1975 re-numbered this section as sec. 4-1-305.

**4-423. [Transferred.]**

**Compiler's Notes**

Section 100, Ch. 387, Laws of 1975 re-numbered this section as sec. 4-6-206.

**4-424, 4-425. Repealed.**

**Repeal**

Sections 4-424, 4-425 (Secs. 22, 23, Ch. 84, L. 1937; Sec. 1, Ch. 67, L. 1955), relating to the liquor control board's rules,

regulations, forms, and records, and retail license denial, nonrenewal, suspension and revocation, were repealed by Sec. 121, Ch. 387, Laws 1975.



**4-428. [Transferred.]****Compiler's Notes**

Section 101, Ch. 387, Laws of 1975 renumbered this section as sec. 4-6-204.

**4-429, 4-430. [Transferred.]****Compiler's Notes**

Sections 102, 103, Ch. 387, Laws of 1975

renumbered these sections as secs. 4-4-405, 4-4-406.

**4-431 to 4-438. Repealed.****Repeal**

Sections 4-431 to 4-438 (Secs. 30 to 37, Ch. 84, L. 1937), relating to license issuance, protests, and elections, and business

names and federal permits for licensees, were repealed by Sec. 121, Ch. 387, Laws 1975.

**4-439. [Transferred.]****Compiler's Notes**

Section 104, Ch. 387, Laws of 1975 renumbered this section as sec. 4-6-404.

**4-440. [Transferred.]****Compiler's Notes**

Section 105, Ch. 387, Laws of 1975 renumbered this section as sec. 4-1-106.

**4-441. Repealed.****Repeal**

Section 4-441 (Sec. 40, Ch. 84, L. 1937), relating to a limitation on the effect of

Liquor Control Act repeals, was repealed by Sec. 121, Ch. 387, Laws 1975.

**4-4-101. (2815.15) Applications for sale or manufacture of beer—qualifications of applicant.** Any person, desiring to manufacture, import or sell beer under the provisions of this code, shall first apply to the department for a permit so to do and pay with such application the license fee herein prescribed; the department shall require of such applicant satisfactory evidence that the applicant is of good moral character and a law-abiding person. Upon being satisfied from such application, or otherwise, that such applicant is qualified as herein provided, the department shall issue such license to such person, which license shall be at all times prominently displayed in the place of business of such applicant. If the department shall find that such applicant is not qualified, no license shall be granted and such license fee shall be returned.

**History:** En. Sec. 6, Ch. 106, L. 1933; Sec. 4-310, R. C. M. 1947; amd. and redes. 4-310 by Sec. 50, Ch. 387, L. 1975.

**Amendments**

The 1975 amendment renumbered this

section; substituted "manufacture, import, or sell" for "manufacture and sell" near the beginning of the section; substituted "department" for "board" throughout the section; and made a minor change in phraseology.

**4-4-102. Right of brewers to maintain and operate storage depots—annual licenses.** It shall be lawful for any brewer duly licensed to manufacture beer in the state of Montana, upon the payment to the department of an annual license fee, in addition to all other fees and taxes required

to be paid by such brewer, of four hundred dollars (\$400.00) for each storage depot, to own, lease, maintain and operate, in any city or town in the state of Montana, a building for use as a storage depot, equipped with refrigeration and cooling apparatus, for receiving, handling, and storing beer therein and distributing and selling beer therefrom, as brewers are permitted to sell and distribute beer under the provisions of this code.

History: En. Sec. 6, Ch. 166, L. 1951; Sec. 4-317.1, R. C. M. 1947; amd. and redes. 4-4-102 by Sec. 54, Ch. 387, L. 1975.

section; substituted "department" for "board" near the beginning of the section; and made a minor change in phraseology.

#### Amendments

The 1975 amendment renumbered this

**4-4-103. (2815.23) Wholesalers' licenses—application for and issuance—subwarehouse—imported beer handled through warehouse or subwarehouse.** Any person desiring to sell and distribute beer as a wholesaler under the provisions of this code shall apply to the department for a license to do so and tender with his application the license fee hereinafter provided for and the department is hereby empowered, authorized and directed to issue wholesale licenses to qualified applicants in accordance with the provisions of this code; such license shall be at all times prominently displayed in the place of business of such wholesaler.

To qualify for a wholesaler's license the applicant shall be a resident of Montana; provided, however, any individual or partnership which has been licensed as a beer wholesaler may, upon incorporation in accordance with the laws of the state of Montana, transfer such license to the corporation if a majority of the capital stock thereof is held by said individual or the members of said partnership; or if applicant is a foreign corporation said corporation shall be authorized to do business in Montana; and said applicant shall have a fixed place of business, sufficient capital, the facilities, storehouse, receiving house or warehouse for the receiving of, storage, handling and moving of beer in large and jobbing quantities for distribution and sale in original packages to other licensed wholesalers or licensed retailers. Each wholesaler shall be entitled to only one (1) wholesale license, which license shall be issued for his principal place of business in Montana; a duplicate license may be issued for one (1) subwarehouse only in Montana for each wholesale licensee, which said duplicate license shall at all times be prominently displayed at said subwarehouse.

All beer manufactured outside of the state of Montana and shipped into Montana shall be consigned to and shipped to a licensed wholesaler, and by him unloaded into his warehouse in Montana or subwarehouse in Montana; said wholesaler shall distribute said beer from such warehouse or subwarehouse; said wholesaler shall keep records at his principal place of business of all beer including the name or kind received, on hand, sold and distributed; said records may at all times be inspected by any member or representative of the department; any beer which has been shipped into Montana and has not been shipped to and distributed from a warehouse of a licensed wholesaler shall be seized by any peace officer or representative of the department and may be confiscated in the manner as provided for the confiscation of intoxicating liquor.

**History:** En. Sec. 14, Ch. 106, L. 1933; amd. Sec. 5, Ch. 46, Ex. L. 1933; amd. Sec. 1, Ch. 246, L. 1947; amd. Sec. 5, Ch. 166, L. 1951; amd. Sec. 1, Ch. 222, L. 1965; Sec. 4-318, R. C. M. 1947; amd. and redes. 4-4-103 by Sec. 56, Ch. 387, L. 1975.

#### Amendments

The 1975 amendment renumbered this section; substituted "wholesale licenses" in the first paragraph for "one wholesale license for every thirty (30) retail beer

licenses figured on the number of retail beer licenses issued in the state"; deleted the five-year residency requirements for wholesale beer licenses in the second paragraph; deleted the final clause of the second paragraph which approved prior-existing licenses; substituted "department" for "board" throughout the section; and made minor changes in phraseology. For prior version, see sec. 4-318 in parent volume.

**4-4-104. (2815.30) Retailers' license—application and issuance—display required—check of alcoholic content by department.** Any person desiring to possess and have for sale beer, under the provisions of this code, for the purpose of selling it at retail, shall first apply to the department for a permit so to do and tender with such application the license fee herein provided for. Upon being satisfied from such application or otherwise that the applicant is qualified as herein provided, the department shall issue a license to such person, which license shall at all times be prominently displayed in the place of business of the applicant. If the department shall find that the applicant is not qualified, no license shall be granted and the license fee tendered shall be by the department returned. The department shall have the right and is hereby given authority to make, at any time, an examination of the books of account of any such retailer and of his premises and otherwise check his methods of conducting business and the alcoholic contents of the beer kept by him for sale. A person may not sell beer at retail without a valid license issued under this code.

**History:** En. Sec. 28, Ch. 106, L. 1933; amd. Sec. 9, Ch. 46, Ex. L. 1933; Sec. 4-327, R. C. M. 1947; amd. and redes. 4-4-104 by Sec. 62, Ch. 387, L. 1975.

#### Amendments

The 1975 amendment renumbered this section; substituted "department" for "board" throughout the section; added the final sentence; and made minor changes in phraseology.

**4-4-105. (2815.35) Special permits to sell alcoholic beverages—application and issuance.** (1)(a) Any association or corporation conducting a picnic, convention, fair, civic or community enterprise, or sporting event shall in the discretion of the liquor division be entitled to a special permit to sell beer to the patrons of such event to be consumed within the enclosure wherein the event is held.

(b) The application of any such association or corporation shall be presented 10 days in advance and shall describe the location of such enclosure where such event is to be held, the nature of the event, and the period when it is contemplated that the event will be held. The application shall be accompanied by the amount of the permit fee.

(c) The permit issued to such association or corporation is a special permit but shall not authorize the sale of beer except starting 1 day in advance of the regular period when events are being held upon such grounds and during the period described in the application and for 1 day thereafter.

(2)(a) A post of a nationally chartered veterans' organization or a lodge of a recognized national fraternal organization not otherwise licensed



under this code shall, in the discretion of the department, without notice or hearing as provided in 4-4-302, be entitled to a special permit to sell beer or a special permit to sell all alcoholic beverages at such post or lodge, to members and their guests only, to be consumed within the hall or building of such post or lodge.

(b) The application of such nationally chartered veterans' organization or lodge of a recognized national fraternal organization shall describe the location of the hall or building where the special permit will be used and the date it will be used.

(c) The special permit issued shall be for a 24-hour period only ending at 2 a.m., and the department may not issue more than 12 such permits to any such post or lodge during a calendar year.

**History:** En. Sec. 13, Ch. 46, Ex. L. 1933; amd. Sec. 1, Ch. 235, L. 1963; amd. Sec. 1, Ch. 235, L. 1974; Sec. 4-332, R. C. M. 1947; amd. and redes. 4-4-105 by Sec. 65, Ch. 387, L. 1975; amd. Sec. 4, Ch. 496, L. 1977.

#### Amendments

The 1974 amendment deleted "fair" before "association" in the first and third paragraphs of subsection (1); substituted "conducting a picnic, convention \* \* \* or sporting event" at the beginning of subsection (1) for "maintaining or operating a place for the exhibition of livestock or agricultural or horticultural products, or for the exhibition of races or rodeos, charging an admission fee thereto"; substituted "liquor division" in the first paragraph of subsection (1) for "board"; substituted "event" for "exhibition" throughout subsection (1); increased the permit fee from \$10 to \$15, and the minimum from \$25 to \$30; inserted "to be sold at those events lasting two (2) or more days" at the end of subsection (1); increased the veterans' or fraternal organization special permit fee from \$5 to \$10; and made minor changes in phraseology.

The 1975 amendment renumbered this section; inserted "shall be presented ten days in advance and" in the second paragraph of subsection (1); substituted "section 4-4-302" for "section 4-407.1" in subsection (2); and made minor changes in phraseology.

The 1977 amendment divided subsections (1) and (2) into subdivisions; deleted a former last paragraph of subsection (1) reading "The permit fee shall be at the rate of fifteen dollars (\$15) per day for each day beer is sold, or to be sold at those events lasting two (2) or more days, but in no event less than thirty dollars (\$30), hereby fixed as the minimum fee for such permit"; inserted "or a special permit to sell all alcoholic beverages" near the middle of subdivision (2)(a); deleted a former second sentence of subdivision (2)(b) providing for a permit fee of \$10 to accompany an application; and made minor changes in phraseology, punctuation and style.

#### Effective Date

Section 2 of Ch. 285, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 25, 1974.

### 4-4-106. Repealed.

#### Repeal

Section 4-4-106 (Sec. 2, Ch. 235, L. 1963; Sec. 87, Ch. 387, L. 1975), relating to spe-

cial permits to sell alcoholic beverages, was repealed by Sec. 17, Ch. 496, Laws 1977.

**4-4-107. Proximity to churches and schools restricted.** A retail licensee may not extend or relocate his premises within six hundred (600) feet of and on the same street as a building used exclusively as a church, synagogue, or other place of worship, or as a school other than a commercially operated or post-secondary school. This distance shall be measured in a straight line from the center of the nearest entrance of the place of worship or school to the nearest entrance of the licensee's premises. This section is a limitation upon the department's licensing authority. However, the department may renew a license for any establishment located in viola-

tion of this section if the establishment was either located on the site before the place of worship or school opened, or located in a bona fide hotel, restaurant, or fraternal organization building at the site since January 1, 1937.

**History:** En. Sec. 13, Ch. 84, L. 1937; Sec. 4-415, R. C. M. 1947; amd. and redes. 4-4-107 by Sec. 92, Ch. 387, L. 1975.

#### **Amendments**

The 1975 amendment renumbered and completely rewrote this section, retain-

ing the same distance requirements and exceptions, providing an exception for pre-existing liquor establishments, prohibiting extension of premises, and limiting the license authority. For prior text, see sec. 4-415 in parent volume.

**4-4-108. License as privilege—criteria for decision on application.** A license under this code is a privilege which the state may grant to an applicant and is not a right to which any applicant is entitled. The department must find, in every case where it makes an order for the issuance of a new license or for the approval of the transfer of a license, that:

(1) neither the applicant nor any member of his immediate family has an ownership interest in any other establishment licensed under this chapter for all-beverages sales, and without financing from or any affiliation to a manufacturer, bottler, or distributor of beer, wine or liquor;

(2) the applicant is a resident of the state and is qualified to vote in a state election; and

(3) the applicant's past record and present status as a purveyor of alcoholic beverages and as a businessman and citizen demonstrate that he is likely to operate his establishment in compliance with all applicable laws of the state and local governments.

**History:** En. Sec. 10, Ch. 84, L. 1937; amd. Sec. 1, Ch. 76, L. 1945; amd. Sec. 1, Ch. 244, L. 1947; amd. Sec. 1, Ch. 10, L. 1957; Sec. 4-412, R. C. M. 1947; amd. and redes. 4-4-108 by Sec. 90, Ch. 387, L. 1975.

#### **Amendments**

The 1975 amendment renumbered and completely rewrote this section. For prior text, see sec. 4-412 in parent volume.

**4-4-109. Passenger carrier licenses.** Common carriers serving Montana may serve beer and liquor to passengers in aircraft over or railroad cars in the state of Montana, upon the issuance by the department of revenue of a retail beer and liquor license for that purpose. Such licenses shall be issued on an annual basis to common carriers making application therefor, and shall be effective from July 1 of the current year to July 1 of the following year. They shall be issued upon payment by the applicant of an annual license fee in the sum of three hundred dollars (\$300); provided, that licenses shall be issued for the remainder of the fiscal year commencing July 1, 1968, upon payment of a license fee in the sum of one hundred fifty dollars (\$150).

**History:** En. 4-4-109 by Sec. 114, Ch. 387, L. 1975.

**4-4-110. Payment of liquor taxes by passenger carriers.** Every airline or railroad operating in the state of Montana and selling liquor purchased outside this state for consumption within this state shall pay to the Mon-

tana department of revenue the excise taxes and state markup which would be applicable to such liquor if purchased from the state liquor store.

The amount of such excise taxes and state markup payable shall be determined by multiplying the following factors:

- (a) the average liquor used per departure;
- (b) the number of departures from Montana on which liquor is served;
- (c) the ratio of Montana revenue passenger miles to system revenue passenger miles; and
- (d) the applicable excise tax and state markup rates.

From said product, the carrier shall subtract the amount of excise taxes and state markup on purchases of liquor made within this state.

**History:** En. 4-4-110 by Sec. 115, Ch. 387, L. 1975.

**4-4-111. Other accounting methods—forms.** (1) The method provided in section 4-4-110 shall be presumed to determine fairly and correctly the liquor purchased outside this state and sold for consumption within this state. Any carrier aggrieved by the application of such method may petition the department for use of some other method. Thereupon, if the department finds that the application of such method will be unjust to the carrier, it may allow the use of the method so petitioned for by the airline or may use such other method as will fairly reflect the liquor purchased outside this state and served for consumption within this state.

(2) The department shall prescribe report forms which shall be used by the carriers in reporting their sales and computing their liability for excise taxes and markup. Report forms shall be filed and payment of excise taxes and state markup shall be made on a quarterly basis. The filing of report forms and payment of excise taxes and state markup shall be made not later than the last day of the month immediately following the close of each quarterly period.

**History:** En. 4-4-111 by Sec. 116, Ch. 387, L. 1975.

**4-4-201. (2815.36) Issuance of retail beer licenses—limit on number of retail licenses—wine license amendments—off-premises consumption.** (1) Except as otherwise provided by law, a license to sell beer at retail or beer and wine at retail, in accordance with the provisions of this code and the rules of the department, may be issued to any person, firm, or corporation who is approved by the department as a fit and proper person, firm, or corporation to sell beer, except that:

(a) the number of retail beer licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within a distance of 5 miles from the corporate limits of such cities and towns shall be determined on the basis of population as shown by the most recent official United States census authorized by congress, as follows:

(i) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the corporate limits of such towns, not more than one retail beer license which may not be used in conjunction with a retail all-beverages license;



(ii) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 2,000 inhabitants and within a distance of 5 miles from the corporate limits of such cities or towns, one beer license for each 500 inhabitants which may not be used in conjunction with retail all-beverages licenses;

(iii) in incorporated cities of over 2,000 inhabitants and within a distance of 5 miles from the corporate limits of such cities, two additional retail beer licenses for the first 2,000 inhabitants or major fraction thereof and one additional retail beer license for each additional 2,000 inhabitants which may not be used in conjunction with retail all-beverages licenses;

(b) the number of the inhabitants in such cities and towns, exclusive of the number of inhabitants residing within a distance of 5 miles from the corporate limits thereof, shall govern the number of retail beer licenses that may be issued for use within such cities and towns and within a distance of 5 miles from the corporate limits thereof. If two or more incorporated municipalities are situated within a distance of 5 miles from each other, the total number of retail beer licenses that may be issued for use in both of such municipalities and within a distance of 5 miles from their respective corporate limits shall be determined on the basis of the combined populations of both of such municipalities and may not exceed the foregoing limitations. The distance of 5 miles from the corporate limits of any incorporated city or incorporated town shall be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of such city or town.

(c) retail beer licenses of issue on March 7, 1947, and which are in excess of the foregoing limitations shall be renewable, but no new licenses may be issued in violation of such limitations;

(d) such limitations do not prevent the issuance of a nontransferable and nonassignable retail beer license to a post of a nationally chartered veterans' organization or a lodge of a recognized national fraternal organization if such veterans' or fraternal organization has been in existence for a period of 5 years or more prior to January 1, 1949;

(e) the number of retail beer licenses that the department may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles from the corporate limits thereof or for use at premises situated within any unincorporated town shall be as determined by the department in the exercise of its sound discretion, except that no retail beer license may be issued for any premises so situated unless the department determines that the issuance of such license is required by public convenience and necessity.

(2) The cities and incorporated towns may enact ordinances defining certain areas in the cities and towns where alcoholic beverages may or may not be sold. No incorporated city or incorporated town may by ordinance restrict the number of licenses that the department may issue. However, no retail license may be issued by the department for any premises situated within any zone of such city or town where the sale of beer or liquor is prohibited by ordinance, a certified copy of which has been filed with the department. The department may deny the issuance of a retail beer or all-

beverages license if it determines that the premises proposed for licensing are off regular police beats and cannot be properly policed by local authorities.

(3) A person holding a license to sell beer for consumption on the premises at retail may apply to the department for an amendment to the license permitting the holder to sell wine as well as beer. The division may issue such amendment if it finds, on a satisfactory showing by the applicant, that the sale of wine for consumption on the premises would be supplementary to a restaurant or prepared-food business. A person holding a beer-and-wine license may sell wine for consumption on the premises. He may buy wine only at retail from the department. Nonretention of the beer license, for whatever reason, shall mean automatic loss of the wine amendment license.

(4) A retail license to sell beer in the original packages for off-premises consumption only may be issued to any person, firm, or corporation who is approved by the department as a fit and proper person, firm, or corporation to sell beer and whose premises proposed for licensing are operated as a bona fide grocery store or a drugstore licensed as a pharmacy. The number of such licenses that the department may issue is not limited by the provisions of subsection (1) of this section but shall be determined by the department in the exercise of its sound discretion, and the department may in the exercise of its sound discretion grant or deny any application for any such license or suspend or revoke any such license for cause.

**History:** En. Sec. 14, Ch. 46, Ex. L. 1933; amd. Sec. 1, Ch. 225, L. 1947; amd. Sec. 1, Ch. 165, L. 1949; amd. Sec. 1, Ch. 55, L. 1955; amd. Sec. 1, Ch. 205, L. 1959; amd. Sec. 1, Ch. 271, L. 1965; amd. Sec. 1, Ch. 31, L. 1974; Sec. 4-333, R. C. M. 1947; amd. and redes. 4-4-201 by Sec. 66, Ch. 387, L. 1975; amd. Sec. 5, Ch. 496, L. 1977.

#### Amendments

The 1974 amendment substituted "department of revenue" near the beginning of subdivision (1) for "Montana liquor control board"; and added subdivisions (4) and (5).

The 1975 amendment renumbered this section; inserted "or beer and wine at retail pursuant to subsection (2)" near the beginning of subsection (1); deleted all provisions for issuance of beer licenses to be used in conjunction with retail liquor licenses; reduced the number of beer licenses to be issued in cities of more than 500 and cities of more than 2,000 inhabitants; redesignated former subsection (4) as subsection (2); substituted "division" for "department" in the second sentence of subsection (2); substituted "for consumption on the premises" in the third sentence of subsection (2) for "subject to the limitations imposed by this title on selling beer"; deleted former subsection (3) which provided for cancellation, in other

than seasonal businesses, of retail licenses not used for ninety days; redesignated former subsections (5) and (2) as subsections (3) and (4); substituted "department" for "majority of the board" in the first sentence of subsection (4); and substituted "department" for "board" elsewhere throughout the section. For prior versions, see the 1974 amendment note and sec. 4-333 in parent volume.

The 1977 amendment deleted "pursuant to subsection (2)" near the beginning of subsection (1) after "license to sell beer at retail, or beer and wine at retail"; substituted "all-beverages licenses" for "liquor licenses" at the end of subdivisions (1)(a)(i) through (1)(a)(iii); inserted present subdivision designations (1)(b) through (1)(d); redesignated former subdivision (1)(b) as subdivision (1)(e); inserted the present subsection "(2)" designation; inserted the present first sentence of subsection (2); inserted "or liquor" in the middle of the third sentence of subsection (2) after "where the sale of beer"; inserted "or all-beverages" in the fourth sentence of subsection (2) after "may deny the issuance of a retail beer"; redesignated former subsection (2) as subsection (3); deleted former subsection (3) providing for an annual license fee of \$200 for a license to sell wine on the premises, when issued as an amendment to a beer only license; deleted a former



third sentence of subsection (4) reading "The annual license fee for a license to sell beer at retail for off premises consumption shall be the same as for a retail beer license"; and made minor changes in phraseology, punctuation and style.

**4-4-202. All beverages license quota.** Except as otherwise provided by law, a license to sell liquor, beer, and wine at retail, an all-beverages license, in accordance with the provisions of this code and the rules of the department, may be issued to any person who is approved by the department as a fit and proper person to sell such beverages, except that:

(1) the number of all-beverages licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within a distance of 5 miles from the corporate limits of such cities and towns shall be determined on the basis of population as shown by the most recent official United States census authorized by congress, as follows:

(a) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the corporate limits of such towns, not more than two retail licenses;

(b) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 3,000 inhabitants and within a distance of 5 miles from the corporate limits of such cities and towns, three retail licenses for the first 1,000 inhabitants and one retail license for each additional 1,000 inhabitants;

(c) in incorporated cities of over 3,000 inhabitants and within a distance of 5 miles from the corporate limits thereof, five retail licenses for the first 3,000 inhabitants and one retail license for each additional 1,500 inhabitants.

(2) The number of the inhabitants in such cities and towns, exclusive of the number of inhabitants residing within a distance of 5 miles from the corporate limits thereof, shall govern the number of retail licenses that may be issued for use within such cities and towns and within a distance of 5 miles from the corporate limits thereof. If two or more incorporated municipalities are situated within a distance of 5 miles from each other, the total number of retail licenses that may be issued for use in both of such municipalities and within a distance of 5 miles from their respective corporate limits shall be determined on the basis of the combined population of both of such municipalities and may not exceed the foregoing limitations. Notwithstanding the preceding sentence, the total population for determining the quota of a city may include with the city's population the population residing outside but within 5 miles of the city limits in a case where the number of persons residing outside but within 5 miles of the city exceeds the number of persons residing within the city. Such a determination may be made only upon a special census taken by the department or its agent at the expense of the applicant for a license under this section. The distance of 5 miles from the corporate limits of any incorporated city or incorporated town shall be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of the city or town.



(3) Retail all-beverages licenses of issue on March 7, 1947, and which are in excess of the foregoing limitations shall be renewable, but no new licenses may be issued in violation of such limitations.

(4) Such limitations do not prevent the issuance of a nontransferable and nonassignable (as to ownership only) retail license to any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization if such veterans' or fraternal organization has been in existence for a period of 5 years or more prior to January 1, 1949.

(5) The number of retail all-beverages licenses that the department may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles from the corporate limits thereof may not be more than one license for each 750 population of the county after excluding the population of incorporated cities and incorporated towns in such county.

**History:** En. Sec. 3, Ch. 84, L. 1937; amd. Sec. 1, Ch. 226, L. 1947; amd. Sec. 1, Ch. 164, L. 1949; amd. Sec. 1, Ch. 144, L. 1951; amd. Sec. 1, Ch. 56, L. 1955; amd. Sec. 1, Ch. 206, L. 1959; amd. Sec. 1, Ch. 217, L. 1963; amd. Sec. 1, Ch. 322, L. 1971; amd. Sec. 1, Ch. 340, L. 1974; Sec. 4-403, R. C. M. 1947; amd. and redes. 4-4-202 by Sec. 79, Ch. 387, L. 1975; amd. Sec. 6, Ch. 496, L. 1977.

#### Amendments

The 1971 amendment added a subsection (3) providing for resort liquor license; and made a minor change in phraseology.

The 1974 amendment substituted "and in addition" in the second sentence of subdivision (1)(a) for "exclusive of"; and added to the end of subdivision (1)(b) "and the population residing within a distance of five (5) miles from the corporate limits thereof."

The 1975 amendment renumbered this section; inserted "beer and wine" after "liquor" at the beginning of subsection (1); inserted "an all-beverages license" near the beginning of subsection (1); substituted "department of revenue" for references to the liquor control board throughout the section; substituted "by the department" for "by a majority of the board" in subsection (1); deleted "the number of retail liquor licenses which the board may issue shall be determined as follows" at the end of subsection (1); substituted "retail all-beverages licenses" throughout the section for "retail liquor licenses"; restored "exclusive of" for "and in addition" in the second sentence of sub-

division (1) (a); inserted the third sentence in subdivision (1) (a) providing for the addition of suburban population in certain instances; deleted "and the population residing within a distance of five miles from the corporate limits thereof" at the end of subdivision (1) (b); deleted former subsections (2) and (3) which provided for lapse of licenses, seasonal use, and resort licenses; and made minor changes in phraseology.

The 1977 amendment redesignated former subdivision (1)(a) as subdivisions (1) through (4); deleted the former second and third sentences of subdivision (4) reading "No incorporated city or incorporated town may by ordinance restrict the number of licenses that the department may issue; provided that no retail license may be issued by the department for any premises situated within any zone of a city or town wherein the sale of liquor is prohibited by ordinance, a certified copy of which has been filed with the department. The department shall have discretion to deny the issuance of a retail license if it shall determine that the premises proposed for licensing are off regular police beats and cannot be properly policed by local authorities"; redesignated former subdivision (b) as subdivision (5); and made minor changes in phraseology, punctuation and style.

#### Effective Date

Section 2 of Ch. 322, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 15, 1971.

**4-4-203. Lapse of license for nonuse.** From and after February 1, 1949, any retail license issued pursuant to this code (including any retail license to sell beer for off-premises consumption), not actually used

in a going establishment for a period of ninety (90) days, shall automatically lapse. Upon determining the fact of nonuser for such period the department shall cancel such license of record and no portion of the fee paid therefor shall be refundable. The provisions of this subsection shall not apply to the license of any licensee whose premises are operated on a seasonal basis in connection with a bona fide dude ranch, resort, park hotel, tourist facility or like business, provided such licensee has secured written authority from the department to close, has licensed premises for a specified period of greater than ninety (90) days' duration, and providing further that should the department determine that such lapse was reasonably beyond the control of the licensee, then the lapse provision set out above shall not apply.

**History:** En. 4-4-203 by Sec. 80, Ch. 387,  
L. 1975.

**4-4-204. Resort licenses.** It is the intent and purpose of this section to encourage the growth of quality recreational resort facilities in undeveloped areas of the state and to provide for the orderly growth of existing recreational sites by the establishment of resort areas within which retail liquor licenses may be issued by the department under the terms and as more particularly prescribed below. In addition to the licenses as otherwise set forth in this act, the department may issue resort retail liquor licenses in a resort area.

For the purposes of this section, a resort area is defined as a recreational facility meeting the qualifications determined by the department as hereinafter provided.

The department shall determine that the area for which licenses are to be issued is a resort area, such determination to be made under and pursuant to rules and regulations to be first promulgated on or before December 31, 1975. In addition to the other requirements of this code, a resort area for the purposes of qualification for the issuance of resort retail liquor license must have a current actual valuation of resort or recreational facilities, including land and improvements thereon, of not less than five hundred thousand dollars (\$500,000), at least half of which valuation must be for a structure or structures within the resort area, and must be under the sole ownership or control of one person or entity at the time of the filing of the resort area plat referred to in the next paragraph. The word control shall mean lands held under lease, option, or permit. Before first adopting such rules and regulations in regard to resort liquor licenses, the department shall publish a notice of the hearing to be held on said rules and regulations in a regularly published newspaper in the cities of Billings, Bozeman, Butte, Great Falls, Helena, Miles City, Kalispell and Missoula, Montana, said publication to be published in said newspapers at least once a week for four consecutive weeks, the last of said publications being at least ten (10) but not more than thirty (30) days prior to the date set for said hearing, which shall be held in Helena, Montana, at a time and place designated by the department.



The resort area must be determined by the resort developer or landowner by a plat setting forth the resort boundaries designating the ownership of the lands within the resort area which plat must be verified by the resort developer or landowner, and filed with the department prior to the filing of any applications by individuals for licenses within the resort area. Such plat must show the location and general design of the buildings, and other improvements to be built in said area in which resort retail liquor licenses are to, or may, be located. A master plan for the development of the said area may be filed by the resort developer in satisfaction of this section.

Upon such filing the department shall forthwith schedule a public hearing to be held in Helena, Montana, to determine whether the facility proposed by the resort developer or landowner is a resort area within the meaning of the rules and regulations of the department. At least thirty (30) days prior to the date of the hearing, the department shall publish notice thereof with a description of the location of the proposed resort area in a newspaper published in the county or counties in which the resort is located, once a week for four (4) consecutive weeks. Each resort developer or landowner shall, at the time of filing his application, pay to the department an amount sufficient to cover the costs of said publication. Persons may present statements to the department at the hearing in person or in writing in opposition or support of the plat. Within thirty (30) days of the hearing the department shall accept or reject the plat. If rejected the department must state its reasons and set forth the conditions, if any, under which the plat will be accepted and the decision of the department may be reviewed pursuant to the review procedure set forth in section 4-4-402.

Once filed with the department, the boundaries of a resort may not be changed without full hearing as above provided and the prior approval of the department, which approval shall be according to public convenience and necessity.

When the department has accepted a plat and a given resort area has been determined, applications may then be filed with the department by persons for the issuance of resort retail liquor licenses within the said resort area. Each applicant must submit plans showing the location, appearance and floor plan of the premises for which application for a license is made.

If an applicant otherwise qualifies for a resort license but the premises to be licensed are still in construction, or are otherwise incomplete at the time of such application, the department shall issue a letter stating that the license will be issued at such time as the qualifications for a licensed premises have been met, setting forth such time limitations and requirements as the department may establish.

In addition to the restrictions on sale or transfer of a license as provided in section 4-4-206 herein, no resort retail liquor license may be sold or transferred for operation at a location outside of the boundaries of the resort area.

The annual fee for resort retail liquor licenses within a given resort area shall be two thousand dollars (\$2,000) for each such license.



A resort retail liquor license shall not be subject to the quota limitations set forth in section 4-4-202 above and a resort retail liquor license shall be issued by the department on the basis that the department has determined that such license is justified by public convenience and necessity, following a hearing as provided in section 4-4-302.

**History:** En. 4-4-204 by Sec. 81, Ch. 387, L. 1975.

**4-4-205. Department of revenue determination required.** Any original license issued pursuant to this act, subsequent to April 30, 1974, shall be issued only upon the department of revenue having first determined, upon a hearing held pursuant to the Administrative Procedure Act, that the issuance of such license is justified by public convenience and necessity.

**History:** En. 4-403.1 by Sec. 2, Ch. 340, L. 1974; Sec. 4-403.1, R. C. M. 1947; redes. 4-4-205 by Sec. 120, Ch. 387, L. 1975.

**Effective Date**

Section 3 of Ch. 340, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 28, 1974.

**Title of Act**

An act to amend section 4-403, R. C. M. 1947, relating to the number of retail liquor licenses authorized to be issued; and providing an effective date.

**4-4-206. Contents of license—posting—privilege—transfer—expiration.**

(1) Every license issued under this code shall set forth the name of the person to whom issued, the location by street and number, or other appropriate specific description of location if no street address exists, of the premises where the business is to be carried on under said license, and such other information as the department shall deem necessary. If the licensee is a partnership or if more than one person has any interest in the business operated under the license, the names of all persons in the partnership or interested in the business must appear on the license. Every license must be posted in a conspicuous place on the premises wherein the business authorized under the license is conducted and such license shall be exhibited upon request to any authorized representative of the department or to any peace officer of the state of Montana.

(2) Any license issued under the provisions of this code shall be considered a privilege personal to the licensee named in the license and shall be good until the expiration of the license, unless sooner revoked or suspended. A license may be transferred to the executor or administrator of the estate of any deceased licensee when such estate consists in whole or in part of the business of selling liquor under a license and in such event the license may descend or be disposed of with the business to which it is applicable under appropriate probate proceedings.

(3) In the event of a major loss or damage to licensed premises by unforeseen natural causes, or in case of expiration of lease of the licensed premises, or in the event of eviction or increase of rent by the landlord, in case of rented, licensed premises, or in case of proposed removal of license to premises as substantially suited for the retail liquor business as the premises vacated, the licensee may apply to the department for a trans-

fer of the license to a different premises, the department may in its discretion permit a transfer in such cases if it appears to the department that such a transfer is required to do justice to the licensee applying for the transfer. The department shall in no event, nor for any cause, permit a transfer to a different premises where the sanitary, health and service facilities are less satisfactory than such facilities which exist or had existed at the premises from which the transfer is proposed to be made.

(4) Upon a bona fide sale of the business operated under any license the license may be transferred to a qualified purchaser. No transfer of any license as to person or location shall be effective unless and until approved by the department and any licensee or transferee or proposed transferee who operates or attempts to operate under any supposedly transferred license prior to the approval of such transfer by the department, endorsed upon the license in writing, shall be considered as operating without a license and the license affected may be revoked or suspended by the department; however, the department may, within its discretion permit a qualified purchaser to operate the business to be transferred pending final approval, providing the application for transfer has been filed with the department.

(a) A license may be transferred to a new ownership and to a location outside the quota area for which it was originally issued only when the following criteria are met:

(i) the total number of all-beverages licenses in the original quota area exceeded the quota for that area by at least twenty-five per cent (25%) in the most recent census; and

(ii) the total number of all-beverages licenses in the quota area to which the license would be transferred did not exceed that area's quota by more than twenty-five per cent (25%) in the most recent census; and

(iii) the department finds, after a public hearing, that the public convenience and necessity would be served by such a transfer.

(b) A license transferred between quota areas under this section may not be mortgaged or pledged as security, and may not be transferred to another person, except for a transfer by inheritance upon the death of the licensee. A license transferred between quota areas under this section may be held only by natural persons. For the purpose of this section, natural persons shall not include limited partnerships or other business entities of any kind in which each natural person is not a full participant in the ownership and operation of the business authorized by the license.

Except as above provided, no license shall be transferred or sold, nor shall it be used for any place of business not described in the license, provided however, that such license may be subject to mortgage and other valid liens, in which event the name of the mortgagee, upon application to and approval of the department, must be endorsed on the license. All licenses shall expire at midnight of June thirtieth of each year.

**History:** En. Sec. 8, Ch. 84, L. 1937; amd. Sec. 1, Ch. 97, L. 1951; Sec. 4-410, R. C. M. 1947; amd. and redes. 4-4-206 by Sec. 88, Ch. 387, L. 1975.

#### Amendments

The 1975 amendment renumbered this section; divided the section into subsections; substituted "department" for "board"

throughout the section; substituted the clause at the end of the first paragraph of subsection (4), for a sentence prohibiting transfer of a license out of the quota

area; added subdivisions (a) and (b) to subsection (4); and made minor changes in phraseology. For prior version, see sec. 4-410 in parent volume.

**4-4-207. Limit one license to person—business in name of licensee.** No person shall be granted more than one all-beverages license in any year. No business may be carried on under any license issued under this chapter except in the name of the licensee.

**History:** En. Sec. 9, Ch. 84, L. 1937; Sec. 4-411, R. C. M. 1947; amd. and redes. 4-4-207 by Sec. 89, Ch. 387, L. 1975.

#### Amendments

The 1975 amendment renumbered this section; inserted "all-beverages" before

"license" in the first sentence; deleted a former second sentence requiring clubs and organizations to have a beer license; and added the present second sentence. For prior version, see sec. 4-411 in parent volume.

**4-4-301. Application for all-beverages license—penalty for false statements.** (1) Prior to the issuance of an all-beverages license as provided in 4-4-202, the applicant shall file with the department an application in writing, signed by the applicant and containing such information and statements relative to the applicant and the premises where the alcoholic beverage is to be sold as may be required by the department.

(2) The application shall be verified by the affidavit of the person making the same before a person authorized to administer oaths. If any false statement is made in any part of the application, the applicant or applicants are guilty of a misdemeanor, and upon conviction thereof the license, if issued, shall be revoked and the applicant or applicants subjected to the penalties provided by law.

**History:** En. Sec. 5, Ch. 84, L. 1937; amd. Sec. 2, Ch. 221, L. 1939; amd. Sec. 2, Ch. 163, L. 1941; Sec. 4-407, R. C. M. 1947; amd. and redes. 4-4-301 by Sec. 83, Ch. 387, L. 1975; amd. Sec. 7, Ch. 496, L. 1977.

#### Amendments

The 1975 amendment renumbered this section; substituted "department of revenue" and "department" for references to

the Montana liquor control board; and substituted "alcoholic beverage" for "liquor" in the first paragraph.

The 1977 amendment inserted the subsection designations; substituted "an all-beverages license as provided in 4-4-202" near the beginning of subsection (1) for "a license as herein provided"; and made minor changes in phraseology and punctuation.

**4-4-302. Notice of application—publication—protest.** (1) When an application has been filed with the department for a license to sell alcoholic beverages at retail or to transfer such license, the department shall promptly publish in a newspaper of general circulation in the city, town, or county from which the application comes a notice that such applicant has made application for such license and that protests against the issuance of a license to the applicant will be heard at a time and place stated in the notice, which shall be in the city of Helena, Montana. Notice of application for a new license shall be published once a week for 4 consecutive weeks. Notice of application for transfer of a license shall be published once a week for 2 consecutive weeks. Notice may be substantially in the following form:



NOTICE OF APPLICATION FOR RETAIL  
ALL-BEVERAGES LICENSE

Notice is hereby given that on the ——— day of ———, 19—, one (name of applicant) filed an application for a retail all-beverages license with the Montana department of revenue, to be used at (describe location of premises where beverages are to be sold), and protests, if any there be, against the issuance of such license will be heard at the hour of —M, on the ——— day of ———, 19—, at the office of the Montana department of revenue in Helena, Montana.

Dated ———

Signed ———  
ADMINISTRATOR

(2) No license may be issued until on or after the date set in the notice for hearing protests. Nor may a license under this code be issued if the department finds from the evidence at the hearing that the welfare of the people residing in the vicinity of the place for which such license is desired will be adversely and seriously affected or that the purposes of this code will not be carried out by the issuance of such license. Each applicant shall, at the time of filing his application, pay to the department an amount sufficient to cover the costs of publishing the notice.

**History:** En. Sec. 1, Ch. 202, L. 1951; amd. Sec. 1, Ch. 145, L. 1965; Sec. 4-407.1, R. C. M. 1947; amd. and redes. 4-4-302 by Sec. 84, Ch. 387, L. 1975; amd. Sec. 8, Ch. 496, L. 1977.

**Amendments**

The 1975 amendment renumbered this section; substituted references to the department of revenue for references to the Montana liquor control board throughout the section; substituted "alcoholic beverages" for "liquor" in the first sentence; inserted "and place" after "time" near the end of the first sentence; deleted "at a special or regular meeting of the Montana

liquor control board" before "in the city of Helena" at the end of the first sentence; substituted "ALL-BEVERAGES LICENSE" for "LIQUOR LICENSE" in the form caption; substituted "purposes of this code" for "purposes of the Montana Retail Liquor License Act" in the last paragraph; and made minor changes in phraseology and punctuation.

The 1977 amendment inserted the subsection designations; substituted "beverages are" near the beginning of the form in subsection (1) for "license is" after "describe location of premises where"; and made minor changes in phraseology, punctuation and style.

**4-4-303. Investigation of application.** Upon receipt of a completed application for a license under this code, accompanied by the necessary license fee, the department shall within 30 days make a thorough investigation of all matters pertaining thereto and shall determine whether such applicant is qualified to receive a license and his premises are suitable for the carrying on of the business and whether the requirements of this code and the rules promulgated by the department are met and complied with.

**History:** En. Sec. 6, Ch. 84, L. 1937; Sec. 4-408, R. C. M. 1947; amd. and redes. 4-4-303 by Sec. 85, Ch. 387, L. 1975; amd. Sec. 9, Ch. 496, L. 1977.

**Amendments**

The 1975 amendment renumbered this section; inserted "completed" before "application" in the first sentence; substituted

"department of revenue" or "department" for "board"; and made minor changes in phraseology.

The 1977 amendment deleted "and bond" near the beginning of the section after "accompanied by the necessary license fee"; and made minor changes in phraseology, punctuation and style.

**4-4-304. Fingerprints required of licensees.** All applicants for a Montana retail all-beverages or beer license, including corporate officers and

managers, may be required by the department of revenue, when applying for said license to have their fingerprints taken for use in determining the eligibility of the applicant for such license.

**History:** En. Sec. 1, Ch. 487, L. 1973; Sec. 4-408.1, R. C. M. 1947; amd. and redes. 4-4-304 by Sec. 86, Ch. 387, L. 1975.

**Amendments**

The 1975 amendment renumbered this section; substituted "all-beverages" for "liquor"; and inserted "and managers" after "corporate officers."

**Title of Act**

An act permitting submission of fingerprints in connection with retail liquor and beer licenses.

**4-4-305. Holders of security interests.** This provision shall also apply to all who file a security interest against such license except as to banks, savings and loan institutions, and licensed lending agencies.

**History:** En. Sec. 2, Ch. 487, L. 1973; Sec. 4-408.2, R. C. M. 1947; redes. 4-4-305 by Sec. 120, Ch. 387, L. 1975.

**4-4-401. (2815.44) Fees for licenses.** (1)(a) Each beer licensee, under the provisions of this code, shall pay an annual license fee as follows:

(i) each brewer, wherever located, whose product is sold or offered for sale within the state, \$500; for each storage depot, \$400;

(ii) each wholesaler, \$400;

(iii) each beer retailer, \$200; with a wine license amendment, an additional \$200;

(iv) for a license to sell beer at retail for off-premises consumption only, the same as a retail beer license;

(v) any unit of a nationally chartered veterans' organization, \$50.

(b) A transfer of any brewer's, wholesaler's, or beer retailer's license may be made on application to the department with the consent of the department, provided that the transferee qualifies under this code.

(c) This code shall not be construed or interpreted so as to repeal, amend, modify, change, or alter any provisions of this code which require beer manufactured outside of Montana and shipped into Montana to be consigned to and shipped to a licensed wholesaler and by him unloaded into his warehouse or subwarehouse in Montana.

(2) The permit fee under 4-4-105(1) is computed at the rate of \$15 a day for each day beer is sold at those events lasting 2 or more days but in no case be less than \$30.

(3) The permit fee under 4-4-105(2) is \$10 for the sale of beer only or \$20 for the sale of all alcoholic beverages.

(4) Passenger carrier licenses shall be issued upon payment by the applicant of an annual license fee in the sum of \$300.

(5) The annual license fee for a license to sell wine on the premises, when issued as an amendment to a beer-only license, is \$200.

(6) Each licensee licensed under the quotas of 4-4-202 shall pay an annual license fee as follows:

(a) except as hereinafter provided, for each license outside of incorporated cities and incorporated towns or in incorporated cities and incorporated towns with a population of less than 2,000, \$400;

(b) except as hereinafter provided, for each license in incorporated cities with a population of more than 2,000 and less than 5,000, or within a distance of 5 miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, \$500;

(c) except as hereinafter provided, for each license in incorporated cities with a population of more than 5,000 and less than 10,000 or within a distance of 5 miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, \$650;

(d) for each license in incorporated cities with a population of 10,000 or more, or within a distance of 5 miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, \$800;

(e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated towns is measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city or town; and where the premises of the applicant to be licensed are situated within 5 miles of the corporate boundaries of two or more incorporated cities or incorporated towns of different populations, the license fee chargeable by the larger incorporated city or incorporated town applies and shall be paid by the applicant. When the premises of the applicant to be licensed are situated within an incorporated town or incorporated city and any portion of the incorporated town or incorporated city is without a 5-mile limit, the license fee chargeable by the smaller incorporated town or incorporated city applies and shall be paid by the applicant.

(f) an applicant for the issuance of an original license to be located in areas described in paragraph (d) of this subsection shall pay a one-time original license fee of \$20,000 for any such license issued. The one-time license fee of \$20,000 shall not apply to any transfer or renewal of a license duly issued prior to July 1, 1974. All licenses, however, are subject to the annual renewal fee of \$800.

(7) The license fees herein provided for are exclusive of and in addition to other license fees chargeable in Montana for the sale of liquor, beer, and malt beverages.

**History:** En. Sec. 45, Ch. 106, L. 1933; amd. Sec. 15, Ch. 46, Ex. L. 1933; amd. Sec. 2, Ch. 246, L. 1947; amd. Sec. 1, Ch. 122, L. 1963; Sec. 4-341, R. C. M. 1947; amd. and redes. 4-4-401 by Sec. 68, Ch. 387, L. 1975; amd. Sec. 10, Ch. 496, L. 1977.

#### Amendments

The 1975 amendment renumbered this section; substituted "department of revenue" or "department" for "liquor control board" or "board" throughout the section; deleted a provision for a license fee for

common carriers of passengers; deleted a provision in the last paragraph allowing cities and towns to impose a fee on a licensee of the board for selling beer at retail; and made minor changes in phraseology and style.

The 1977 amendment designated the former section as subsection (1) and divided it into subdivisions; inserted "beer" after "Each" at the beginning of subdivision (1)(a); added the storage depot fee at the end of subdivision (1)(a)(i); added the wine license amendment fee at the



end of subdivision (1)(a)(iii); inserted subdivision (1)(a)(iv); deleted a sentence following subdivision (1)(a)(v) providing that all licenses issued in any year expire at midnight on the 30th of June; substituted "any brewer's, wholesaler's, or beer retailer's license" near the beginning of subdivision (1)(b) for "any such license"; deleted the former second sentence of subdivision (1)(b) reading "The cities and incorporated towns may enact ordinances defining certain areas in said cities or

towns where beer may or may not be sold providing that said ordinance does not affect the limit of retail beer licenses which shall be issued by the Montana department of revenue based upon the population of the city or town and said city or town shall file a certified copy of said ordinance with the Montana department of revenue"; added subsections (2) through (7); and made minor changes in phraseology, punctuation and style.

**4-4-402. (2815.45) Denial of application for license or renewal—suspension or revocation—actions.** The department may (1) upon its own motion and shall (2) upon a written, verified complaint of any person, investigate the action and operation of any brewer, wholesaler or retailer licensed under this code. If the department, after investigation, shall have reasonable cause to believe that any such licensee has violated any of the provisions of this code, or any rules, or regulations of the department, it may, in its discretion, and in addition to the other penalties herein prescribed, reprimand a licensee, proceed to revoke the license of any such licensee, or it may suspend the same for a period of not to exceed three (3) months, or it may refuse to grant a renewal of said license upon the expiration thereof or impose a civil penalty not to exceed one thousand five hundred dollars (\$1500), subject to the opportunity for a hearing under the Montana Administrative Procedure Act.

**History:** En. Sec. 46, Ch. 106, L. 1933; amd. Sec. 8, Ch. 166, L. 1951; Sec. 4-342, R. C. M. 1947; amd. and redes. 4-4-402 by Sec. 69, Ch. 387, L. 1975.

#### Amendments

The 1975 amendment renumbered this section; substituted "this code" for "the Montana Beer Act"; substituted "department" for "board"; inserted "reprimand a

licensee" after "penalties herein prescribed" near the middle of the section; added the final clauses imposing a civil penalty and providing for hearing; deleted the remainder of the section which provided procedural details for revocation hearing and appeal; and made minor changes in phraseology. For prior version, see sec. 4-342 in the parent volume.

**4-4-403. Census of population.** The census taken under the direction of congress shall be the basis upon which the respective populations of the municipalities shall be determined unless a direct enumeration of the inhabitants is made by the state or municipal corporation, in which case such later direct enumeration shall constitute such basis. No census hereafter taken may be such basis until it is published under the authority under which the same is taken, and then its effect shall be prospective only from the date of such publication.

**History:** En. Sec. 4, Ch. 84, L. 1937; amd. Sec. 1, Ch. 221, L. 1939; amd. Sec. 1, Ch. 163, L. 1941; amd. Sec. 1, Ch. 211, L. 1943; amd. Sec. 1, Ch. 236, L. 1947; amd. Sec. 1, Ch. 356, L. 1974; Sec. 4-404, R. C. M. 1947; amd. and redes. 4-4-403 by Sec. 119, Ch. 387, L. 1975; amd. Sec. 11, Ch. 496, L. 1977.

#### Amendments

The 1974 amendment inserted the para-

graph after subdivision (f) concerning a one-time original license fee of \$20,000; and made a minor change in phraseology.

The 1975 amendment renumbered this section; substituted "the quotas of section 4-4-202" for "provisions of this act" in the introductory sentence; increased license fees in subdivisions (a) to (d) by \$200; increased the renewal fee in the first paragraph after subdivision (f) by \$200; and made minor changes in style.

The 1977 amendment deleted provisions for license fees for retail sale of liquor within and without cities and towns of designated populations; deleted provisions concerning a one-time license fee; deleted provisions that license fees be exclusive of and in addition to other license fees

charged for the sale of liquor, beer and malt beverages; and made minor changes in phraseology and punctuation. For section prior to amendment, see 1974 and 1975 amendment notes and section 4-404 in the parent volume.

**4-4-404. Fee for and expiration of licenses.** Each July 1, the department shall issue licenses to brewers, wholesalers, or retailers or for the retail sale of alcoholic beverages on an annual basis and at such fees as are prescribed by law, and such licenses shall expire at midnight of June 30 of the succeeding year. The department shall notify each applicant for an original license or renewal that he should inform himself of applicable provisions of federal law which may require a permit from a federal agency.

**History:** En. Sec. 2, Ch. 235, L. 1943; Sec. 4-406, R. C. M. 1947; amd. and redes. 4-4-404 by Sec. 82, Ch. 387, L. 1975; amd. Sec. 12, Ch. 496, L. 1977.

#### Amendments

The 1975 amendment renumbered this section; substituted "department of revenue" for "liquor control board"; substituted "alcoholic beverages liquor" for "beer and/or liquor"; deleted a proviso

concerning licenses prior to the 1945; and added the final sentence. For prior version, see sec. 4-406 in the parent volume.

The 1977 amendment inserted "to brewers, wholesalers, or retailers or" near the beginning of the first sentence; deleted "liquor" in the middle of the first sentence after "the retail sale of alcoholic beverages"; and made minor changes in phraseology, punctuation and style.

**4-4-405. Renewal of suspended licenses.** After suspension or revocation of a license the department shall have the power to renew the same if in its discretion a proper showing therefor has been made.

**History:** En. Sec. 27, Ch. 84, L. 1937; Sec. 4-429, R. C. M. 1947; amd. and redes. 4-4-405 by Sec. 102, Ch. 387, L. 1975.

#### Amendments

The 1975 amendment renumbered this section; and substituted "department" for "board."

**4-4-406. City and county licenses—fees.** The city council of any incorporated town or city or the county commissioners outside of any incorporated town or city may provide for the issuance of licenses to persons to whom a retail license has been issued under the provisions of this code and may fix license fees, not to exceed a sum equal to five-eighths of the fee for an all-beverage license or 100% of the fee for a beer or beer-and-wine license collected by the department from such licensee under this code.

**History:** En. Sec. 28, Ch. 84, L. 1937; Sec. 4-430, R. C. M. 1947; amd. and redes. 4-4-406 by Sec. 103, Ch. 387, L. 1975; amd. Sec. 1, Ch. 509, L. 1977.

#### Amendments

The 1975 amendment renumbered this section; inserted "retail" before "license" in the middle of the section; substituted

"department" for "board" and made minor changes in phraseology.

The 1977 amendment substituted "five-eighths of the fee for an all-beverage license or 100% of the fee for a beer or beer-and-wine license" near the end of the section for "fifty per cent (50%) of the license fee"; and made minor changes in phraseology and punctuation.

**4-4-407. Penalty for sale of alcoholic beverage without license.** Any person, who has not been issued a license under this code, who shall sell or keep for sale any alcoholic beverage, shall be guilty of a felony and upon conviction thereof shall be fined not less than one thousand dollars

(\$1000) nor more than five thousand dollars (\$5,000), or be imprisoned in the state prison for not less than one (1) nor more than five (5) years, or both such fine and imprisonment.

**History:** En. Sec. 18, Ch. 84, L. 1937; Sec. 4-420, R. C. M. 1947; amd. and redes. 4-4-407 by Sec. 97, Ch. 387, L. 1975.

#### Amendments

The 1975 amendment renumbered this section; substituted "beverage" for "liquor"; and made minor changes in phraseology and style.

### CHAPTER 5—IDENTIFICATION CARDS

#### Section

- 4-5-101. All persons attaining the age of eighteen (18) years may apply to the county clerk and recorder for an identification card.
- 4-5-102. Duties of the county clerk and recorder.
- 4-5-103. County clerk and recorder to forward application to the Montana department of revenue for issuance of identification card.
- 4-5-104. Montana department of revenue to furnish application forms to county clerk and recorders.
- 4-5-105. Fee to be charged.

#### 4-501 to 4-505. Repealed.

##### Repeal

Sections 4-501 to 4-505 (Secs. 1 to 5, Ch. 107, L. 1955; Secs. 15, 16, Ch. 154, L. 1965; Secs. 6, 7, Ch. 240, L. 1971; Secs. 7, 8, Ch. 94, L. 1973), relating to alcoholic beverages identification cards, definitions,

form, files, nonliability of licensees for sales to cardholding minors, and rules and regulations of the liquor control board, were repealed by Sec. 121, Ch. 387, Laws 1975.

#### 4-506 to 4-510. [Transferred.]

##### Compiler's Notes

Sections 120 and 106 to 109, Ch. 387,

Laws of 1975 renumbered these sections as secs. 4-5-101 to 4-5-105.

#### 4-512. [Transferred.]

##### Compiler's Notes

Section 120, Ch. 387, Laws of 1975 renumbered this section as sec. 4-5-106.

#### 4-513, 4-514. Repealed.

##### Repeal

Sections 4-513, 4-514 (Secs. 8, 9, Ch. 190, L. 1957), relating to penalty for violations

of identification card provisions, and jurisdiction in prosecutions, were repealed by Sec. 121, Ch. 387, Laws 1975.

**4-5-101. All persons attaining the age of eighteen (18) years may apply to the county clerk and recorder for an identification card. All persons attaining the age of eighteen (18) years may apply to the county clerk and recorder of the county in which the applicant resides for an identification card which shall prima facie establish that the applicant has reached the age of eighteen (18) years.**

**History:** En. Sec. 1, Ch. 190, L. 1957; amd. Sec. 8, Ch. 240, L. 1971; amd. Sec. 9, Ch. 94, L. 1973; Sec. 4-506, R. C. M. 1947; redes. 4-5-101 by Sec. 120, Ch. 387, L. 1975.

#### Amendments

The 1971 amendment reduced the specified age from 21 to 19 years in two places. The 1973 amendment reduced the specified age from nineteen to eighteen years in two places.



**4-5-102. Duties of the county clerk and recorder.** Upon making application to the county clerk and recorder for an identification card, the applicant must apply in person before the county clerk and recorder, who shall ascertain and receive from the applicant:

1. The true and full name of the applicant;
2. The date of birth of the applicant, provided, however, it shall be within the discretion of the officer to require proof of the date of birth with a certified copy of his or her birth certificate;
3. Place of birth of the applicant;
4. The height and weight of the applicant;
5. The color of eyes and hair of the applicant; and
6. Two, one and one-quarter inch ( $1\frac{1}{4}$ " ) by one and one-half inch ( $1\frac{1}{2}$ " ) photographs of the applicant which shall bear a true resemblance to the applicant. It shall be within the discretion of the clerk and recorder to refuse a photograph which does not present a true resemblance of the applicant. The second photograph is to be filed with the state.

**History:** En. Sec. 2, Ch. 190, L. 1957; Sec. 4-507, R. C. M. 1947; amd. and redes. 4-5-102 by Sec. 106, Ch. 387, L. 1975.

section; changed the requirement of item 6 from one photograph to two photographs; and added the final sentence regarding the second photograph.

**Amendments**

The 1975 amendment renumbered this

**4-5-103. County clerk and recorder to forward application to the Montana department of revenue for issuance of identification card.** The county clerk and recorder shall forward the application, properly filled in and authenticated, to the Montana department of revenue, and that department shall prepare an identification card upon a laminating machine. The identification card shall set forth all the information contained in the application, together with the photograph, and shall be signed by the director of the Montana department of revenue or his designee.

**History:** En. Sec. 3, Ch. 190, L. 1957; Sec. 4-508, R. C. M. 1947; amd. and redes. 4-5-103 by Sec. 107, Ch. 387, L. 1975.

section; substituted references to department of revenue for references to liquor control board throughout the section; and substituted "director" for "chairman" near the end of the second sentence.

**Amendments**

The 1975 amendment renumbered this

**4-5-104. Montana department of revenue to furnish application forms to county clerk and recorders.** It shall be the duty of the Montana department of revenue to prepare suitable application blanks and cause the same to be distributed to the various county clerk and recorders.

**History:** En. Sec. 4, Ch. 190, L. 1957; Sec. 4-509, R. C. M. 1947; amd. and redes. 4-5-104 by Sec. 108, Ch. 387, L. 1975.

**Amendments**

The 1975 amendment renumbered this section; and substituted "department of revenue" for "liquor control board."

**4-5-105. Fee to be charged.** The county clerk and recorders shall charge and collect a fee of \$1.50 from the applicant at the time the application is prepared; and \$1 thereof shall be transmitted to the department along with the application and shall be used to defray the cost of administering and

executing the provisions of this chapter. Any surplus shall revert to the general fund of Montana. The remaining 50 cents shall be paid into the general fund of the county to defray the county's costs in administering this program.

**History:** En. Sec. 5, Ch. 190, L. 1957; amd. Sec. 1, Ch. 272, L. 1973; Sec. 4-510, R. C. M. 1947; amd. and redes. 4-5-105 by Sec. 109, Ch. 387, L. 1975; amd. Sec. 13, Ch. 496, L. 1977.

#### Amendments

The 1973 amendment increased the fee from fifty cents to one dollar.

The 1975 amendment renumbered this section; increased the fee from \$1.00 to \$1.50; substituted "department of revenue" for "liquor control board"; provided for

disposition of the fifty cents increase; and made minor changes in phraseology.

The 1977 amendment substituted "department" for "Montana department of revenue" in the first sentence; and made minor changes in phraseology, punctuation and style.

#### Effective Date

Section 2 of Ch. 272, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 10, 1973.

### 4-5-106. [Transferred from 4-512.]

#### Compiler's Notes

This section was originally numbered 4-512. Section 120, Ch. 387, Laws of 1975, renumbered it to appear here. Because

there has been no change in text, the section has not been reprinted here but may be found in the parent volume as 4-512.

## CHAPTER 6—ENFORCEMENT

#### Section

- 4-6-101. Transfer of alcoholic beverages except as provided by code unlawful.
- 4-6-102. Sale of liquor not purchased from state store forbidden—penalty.
- 4-6-103. Providing alcoholic beverage prohibited.
- 4-6-104. Age limit for sale of alcoholic beverages.
- 4-6-106. Consumption of alcoholic beverage on druggists' premises prohibited.
- 4-6-201. Investigators and prosecuting officers may be employed by department of revenue.
- 4-6-203. Search warrants—issuance.
- 4-6-204. Officers may examine premises.
- 4-6-205. Unlawful alcoholic beverage—seizure—forfeiture.
- 4-6-207. Seizure of alcoholic beverage and conveyance—forfeiture of conveyance and alcoholic beverage to state.
- 4-6-208. Force may be used in seizure of alcoholic beverages, when—retention of seized alcoholic beverage—forfeiture—hearing.
- 4-6-209. Disposal of forfeited alcoholic beverage—report by officers of seizure.
- 4-6-210. Inspection of carriers' records—when authorized.
- 4-6-211. Unlawful for carrier to refuse inspection of records.
- 4-6-301. Jurisdiction of courts.
- 4-6-302. Appeals.
- 4-6-303. Description of offense—sufficiency of.
- 4-6-304. Description of offense—sufficiency—defenses need not be negated.
- 4-6-305. Sufficiency of evidence.
- 4-6-306. Proof of violation—sufficiency.
- 4-6-307. Analyst's report as prima facie evidence of contents.
- 4-6-308. Presumption of intoxicating beverage arises, when.
- 4-6-309. Inferences from facts of code claimed to be violation.
- 4-6-401. Premises where liquor illegally sold public nuisance.
- 4-6-402. Action to enjoin nuisance—injunction—order of court—bond.
- 4-6-403. Penalty for brewer's and wholesalers' failure to pay tax.
- 4-6-404. Penalty for violating act—revocation of license.

**4-6-101. (2815.108) Transfer of alcoholic beverages except as provided by code unlawful.** Except as provided in this code, no person shall, within

the state, by himself, his clerk, servant, or agent, attempt to purchase, or directly or indirectly or upon any pretense or upon any device, purchase, or in consideration of the sale or transfer of any property, or for any other consideration, or at the time of the transfer of any property, take or accept from any other person any alcoholic beverage.

**History:** En. Sec. 49, Ch. 105, L. 1933; Sec. 4-154, R. C. M. 1947; amd. and redes. 4-6-101 by Sec. 19, Ch. 387, L. 1975.

**Amendments**

The 1975 amendment renumbered this section; substituted "alcoholic beverage" for "liquor" at the end of the section; and made a minor change in phraseology.

**4-6-102. Sale of liquor not purchased from state store forbidden—penalty.** It is unlawful for any licensee to sell or keep for sale or have on his premises for any purpose whatever any liquor except that purchased from the state liquor store, and any licensee found in possession of or selling and keeping for sale any liquor which was not purchased from a state liquor store shall, upon conviction, be punished by a fine of not less than \$500 or more than \$1,500, be punished by imprisonment for not less than 3 months or more than 1 year or by both such fine and imprisonment, and if the department is satisfied that any such liquor was knowingly sold or kept for sale within the licensed premises by the licensee or by his agents, servants, or employees, the department shall immediately revoke the license.

**History:** En. Sec. 17, Ch. 84, L. 1937; Sec. 4-419, R. C. M. 1947; amd. and redes. 4-6-102 by Sec. 96, Ch. 287, L. 1975; amd. Sec. 14, Ch. 496, L. 1977.

**Amendments**

The 1975 amendment renumbered this sec-

tion; substituted "department" for "board" in two places; and made minor changes in style.

The 1977 amendment deleted "of said licensee" from the end of the section; and made minor changes in phraseology, punctuation and style.

**4-6-103. (2815.114) Providing alcoholic beverage prohibited.** (1) No store manager, retail licensee, nor any employee of a store manager, or retail licensee, may sell any alcoholic beverage, or permit any alcoholic beverage to be sold, to any person apparently under the influence of an alcoholic beverage.

(2) No person may give an alcoholic beverage to a person apparently under the influence of alcohol.

**History:** En. Sec. 55, Ch. 105, L. 1933; Sec. 4-160, R. C. M. 1947; amd. and redes. 4-6-103 by Sec. 23, Ch. 387, L. 1975.

**Amendments**

The 1975 amendment renumbered this section; designated the former section as

subsection (1); substituted "store manager, retail licensee" for "vendor, beer licensee, or club licensee" in two places in subsection (1); substituted "alcoholic beverage" for "liquor" throughout subsection (1); and added subsection (2).

**4-6-104. (2815.115) Age limit for sale of alcoholic beverages.** Except in the case of an alcoholic beverage given to a person under the age of eighteen (18) years by his parent or guardian for beverage or medicinal purposes, or administered to him by his physician or dentist for medicinal purposes, or sold to him by a vendor or druggist upon the prescription of a physician, no person shall sell, give, or otherwise supply an alcoholic



beverage to any person under the age of eighteen (18) years, or permit any person under that age to consume an alcoholic beverage.

**History:** En. Sec. 56, Ch. 105, L. 1933; Sec. 4-161, R. C. M. 1947; amd. Sec. 1, Ch. 240, L. 1971; amd. Sec. 2, Ch. 94, L. 1973; amd. and redes. 4-6-104 by Sec. 24, Ch. 387, L. 1975.

#### Compiler's Notes

Section 1, Ch. 264, Laws 1977, proposes to amend this section to read as follows: "4-6-104. Age limit for sale of alcoholic beverages. Except in the case of an alcoholic beverage given to a person under the age of 19 years by his parent or guardian for beverage or medicinal purposes or administered to him by his physician or dentist for medicinal purposes or sold to him by a vendor or druggist upon the prescription of a physician, no person shall sell, give, or otherwise supply an alcoholic beverage to any person under the age of 19 years or permit any person under that age to consume an alcoholic beverage."

Section 4, Ch. 264, Laws 1977 provides: "Sections 1, 2, and 3 of this Act [amending sections 4-6-104, 94-5-609, and 94-5-

610], if approved by the electors of the state of Montana, are effective January 1, 1979."

Section 5, Ch. 264, Laws 1977, provides: "The question of whether this act will become effective shall be submitted to the electors of the state of Montana at the general election to be held November 7, 1978, by printing on the ballot the full title, and the following:

☐ FOR raising the legal drinking age to 19.

☐ AGAINST raising the legal drinking age to 19."

#### Amendments

The 1971 amendment reduced the age limit from 21 to 19 years; and made a minor change in style.

The 1973 amendment reduced the minimum age from nineteen to eighteen years.

The 1975 amendment renumbered this section; and substituted "alcoholic beverage" for "liquor" throughout the section.

### 4-6-105. [Transferred from 4-172.]

#### Compiler's Notes

This section was originally numbered 4-172. Section 120, Ch. 387, Laws of 1975, renumbered it to appear here. Because

there has been no change in text, the section has not been reprinted here but may be found in the parent volume as 4-172.

**4-6-106. (2815.110) Consumption of alcoholic beverage on druggists' premises prohibited.** No person, within the state of Montana, shall consume any alcoholic beverage on any premises where an alcoholic beverage is kept for sale by a druggist, nor shall any druggist permit any alcoholic beverage to be consumed on such premises.

**History:** En. Sec. 51, Ch. 105, L. 1933; Sec. 4-156, R. C. M. 1947; amd. and redes. 4-6-106 by Sec. 20, Ch. 387, L. 1975.

#### Amendments

The 1975 amendment renumbered this section; and substituted "alcoholic beverage" for "liquor" throughout the section.

### 4-6-107, 4-6-108. [Transferred from 4-206, 4-207.]

#### Compiler's Notes

These sections were originally numbered 4-206, 4-207. Section 120, Ch. 387, Laws of 1975 renumbered them to appear here. Be-

cause there has been no change in text, the sections have not been reprinted here but may be found in the parent volume as 4-206, 4-207.

**4-6-201. (2815.150) Investigators and prosecuting officers may be employed by department of revenue.** The department of revenue may appoint one or more investigators or prosecuting officers, who, under its direction, shall perform such duties as it may require, and who shall be paid such salaries, fees and expenses as the said department of revenue may fix.

**History:** En. Sec. 90, Ch. 105, L. 1933; Sec. 4-225, R. C. M. 1947; amd. and redes. 4-6-201 by Sec. 39, Ch. 387, L. 1975.

#### Amendments

The 1975 amendment renumbered this

section; substituted "department of revenue" for "board" in two places; and substituted "investigators" for "inspectors" near the beginning of the section.

### 4-6-202. [No section 4-6-202 enacted in 1975.]

**4-6-203. (2815.133) Search warrants — issuance.** Upon information on oath by any investigator appointed under this code or by any peace officer showing reasonable cause to believe that alcoholic beverages are unlawfully kept or had, or kept or had for unlawful purposes, in any building or premises, it shall be lawful for any court by warrant to authorize and empower the investigator or peace officer, or any other person named therein, to enter and search the building or premises and every part thereof; and for that purpose to break open any door, lock, or fastening of the building or premises or any part thereof, or any closet, cupboard, box, or other receptacle therein which might contain alcoholic beverages.

**History:** En. Sec. 74, Ch. 105, L. 1933; Sec. 4-208, R. C. M. 1947; amd. and redes. 4-6-203 by Sec. 25, Ch. 387, L. 1975.

#### Amendments

The 1975 amendment renumbered this section; substituted "alcoholic beverages"

for "liquor" throughout the section; substituted "court" for "justice" near the middle of the section; substituted "investigator" for "inspector" near the middle of the section; and made minor changes in phraseology.

**4-6-204. Officers may examine premises.** The department of revenue or any duly authorized representative thereof, or the sheriff of any county, shall have the right at any time to make an examination of the premises of a retail licensee as to whether the law of Montana and the rules and regulations of the department are being complied with, and shall also have a right to inspect cars or aircraft of any common carrier system licensed under this code.

**History:** En. Sec. 26, Ch. 84, L. 1937; Sec. 4-428, R. C. M. 1947; amd. and redes. 4-6-204 by Sec. 101, Ch. 387, L. 1975.

#### Amendments

The 1975 amendment renumbered this

section; substituted references to the department of revenue for references to the liquor control board; inserted "or aircraft"; substituted "common carrier system" for "railway system"; and made minor changes in phraseology.

**4-6-205. Unlawful alcoholic beverage—seizure—forfeiture.** Any investigator or peace officer who finds an alcoholic beverage which he has reasonable cause to believe is had or kept by any person in violation of the provisions of this code may forthwith seize and remove the same and the packages in which the alcoholic beverage is kept, and upon conviction of the person for a violation of any provision of 4-3-102, the alcoholic beverage and all packages containing the same shall, in addition to any other penalty prescribed by this code, ipso facto be forfeited to the state of Montana.

**History:** En. 4-6-205 by Sec. 22, Ch. 387, L. 1975; amd. Sec. 15, Ch. 496, L. 1977.

#### Amendments

The 1977 amendment substituted "any

provision of 4-3-102" near the end of the section for "any provision of this section"; and made minor changes in punctuation.

**4-6-206. Repealed.**

**Repeal** the seizure of illicit alcoholic beverages,  
 Section 4-6-206 (Sec. 21, Ch. 84, L. 1937; was repealed by Sec. 17, Ch. 496, Laws  
 Sec. 100, Ch. 387, L. 1975), relating to 1977.

**4-6-207. (2815.134) Seizure of alcoholic beverage and conveyance—  
 forfeiture of conveyance and alcoholic beverage to state.** Whenever an investigator or any peace officer in making or attempting to make a search under and in pursuance of authority of law, shall find in any motor vehicle, motor car, automobile, vessel, boat, canoe or conveyance of any description an alcoholic beverage which is unlawfully kept or had, or kept or held for unlawful purposes contrary to the provisions of this code, he may forthwith seize the alcoholic beverage and packages in which the same is contained, and the motor vehicle, motor car, automobile, vessel, boat, canoe or conveyance in which the alcoholic beverage is found; and upon the conviction of the occupant or person in charge of the vehicle, motor car, automobile, vessel, boat, canoe or conveyance, or of any other person, for having or keeping such alcoholic beverages contrary to any of the provisions of this code in any such vehicle, motor car, automobile, vessel, boat, canoe or conveyance, the court in which the conviction of any such person is had may, in addition to the sentence imposed under authority of law, declare the alcoholic beverage or any part thereof so seized, and the package in which the same is contained, to be forfeited to the state of Montana; and the court may in and by decree, further declare the vehicle, motor car, automobile, vessel, boat, canoe or conveyance so seized to be forfeited to the state of Montana.

**History:** En. Sec. 75, Ch. 105, L. 1933; section; substituted "investigator" for "inspector" near the beginning of the section; Sec. 4-209, R. C. M. 1947; amd. and redes. substituted references to alcoholic beverage for references to liquor throughout the section; and made minor changes in phraseology.  
 4-6-207 by Sec. 26, Ch. 387, L. 1975.

**Amendments**

The 1975 amendment renumbered this

**4-6-208. (2815.135) Force may be used in seizure of alcoholic beverages, when—retention of seized alcoholic beverage—forfeiture—hearing.**

(1) Where alcoholic beverage is found by any investigator or peace officer on any premises or in any place in such quantities as to satisfy the investigator or peace officer that such alcoholic beverage is being had or kept contrary to any of the provisions of this code, it shall be lawful for the investigator or peace officer to forthwith seize and remove, by force if necessary, any alcoholic beverage so found, and the packages in which the alcoholic beverage was had or kept and immediately turn said alcoholic beverage over to the Montana department of revenue.

(2) The Montana department of revenue shall commence an action in the district court of the county in which the alcoholic beverage is found and seized against said alcoholic beverage and the person or persons actually or apparently in possession or control thereof if any such person be present at the time of the seizure. The alcoholic beverage shall be named as one of the defendants to said action.

(3) The complaint shall show the date and place of seizure, the name of the person or persons actually or apparently in possession or control



thereof if any such person be present at the time of the seizure, the reasons the Montana department of revenue claims the right to the possession of the alcoholic beverage and shall demand that all persons who claim any right to the possession of the alcoholic beverage shall show the nature of their claim or claims and that the court declare the alcoholic beverage contraband and that the court order alcoholic beverage be forfeited to the state of Montana.

(4) Summons shall be issued, served or published as in other civil actions provided by Title 93, except that the summons shall be published in the county where the alcoholic beverage was seized if a newspaper is published in said county.

(5) In all actions brought under this code, proof of the absence of the official seal of the Montana department of revenue upon the bottle, jug, package, container or containers of an alcoholic beverage on which a seal is required shall be prima facie evidence that the alcoholic beverage is contraband liquor and prima facie evidence of unlawful possession thereof in the defendants and each of them and in all other persons excepting the Montana department of revenue, and the court shall order all such alcoholic beverage contraband and forfeited to the state of Montana.

**History:** En. Sec. 76, Ch. 105, L. 1933; amd. Sec. 1, Ch. 140, L. 1945; Sec. 4-210, R. C. M. 1947; amd. and redes. 4-6-208 by Sec. 27, Ch. 387, L. 1975.

#### Amendments

The 1975 amendment renumbered this section; substituted "investigator" for "in-

spector" in subsection (1); substituted references to alcoholic beverage for references to liquor throughout the section; substituted "department of revenue" for "liquor control board" throughout the section; inserted "on which a seal is required" in subsection (5); and made minor changes in phraseology.

**4-6-209. (2815.136) Disposal of forfeited alcoholic beverage—report by officers of seizure.** (1) In every case in which a court makes any order for the forfeiture of alcoholic beverages under any of the provisions of this act, and in every case in which any claimant to an alcoholic beverage under the provisions of section 4-6-207, fails to establish his claim and right thereto, the alcoholic beverage in question and the packages in which the alcoholic beverage is kept shall forthwith be delivered to the department. The department shall thereupon, determine the market value of all forfeited alcoholic beverage which is found to be suitable for sale in the state liquor stores, and the department shall pay the amount so determined to the state treasurer, after deducting therefrom the expenses necessarily incurred by the department for transporting the forfeited alcoholic beverage to the state liquor warehouses, and the alcoholic beverage suitable for sale shall be taken into stock by the department and sold under the provisions of this code. All forfeited alcoholic beverage which is found to be unsuitable for sale in state liquor stores shall be destroyed under competent supervision as may from time to time be directed by the department.

(2) In every case in which an alcoholic beverage is seized by a peace officer it shall be his duty to forthwith make or cause to be made to the department a report in writing, of the particulars of such seizure.

**History:** En. Sec. 77, Ch. 105, L. 1933; Sec. 4-211, R. C. M. 1947; amd. and redes. 4-6-209 by Sec. 28, Ch. 387, L. 1975.

#### **Amendments**

The 1975 amendment renumbered this section; substituted references to alcoholic

beverages for "liquor" throughout the section; substituted "section 4-6-207" for "section 4-210" near the beginning of subsection (1); substituted "department" for "board" throughout the section; and made minor changes in phraseology.

### **4-6-210. (2815.137) Inspection of carriers' records—when authorized.**

For the purpose of obtaining information concerning any matter relating to the administration or enforcement of this code, the department or any person appointed by it in writing for the purpose may inspect the freight and express books and records, and all waybills, bills of lading, receipts, and documents in the possession of any railway company, express company, or other common carrier doing business within the state containing any information or record relating to any goods shipped or carried or consigned or received for shipment or carriage within the state.

**History:** En. Sec. 78, Ch. 105, L. 1933; Sec. 4-212, R. C. M. 1947; amd. and redes. 4-6-210 by Sec. 29, Ch. 387, L. 1975.

#### **Amendments**

The 1975 amendment renumbered this section; substituted "department" for "board"; and made a minor change in phraseology.

**4-6-211. (2815.138) Unlawful for carrier to refuse inspection of records.** Every railway company, express company, or common carrier, and every officer or employee of any such company or common carrier, who neglects or refuses to produce and submit for inspection any book, record, or document referred to in the next preceding section when requested to do so by the department or by a person so appointed by it shall be guilty of an offense against this code.

**History:** En. Sec. 79, Ch. 105, L. 1933; Sec. 4-213, R. C. M. 1947; amd. and redes. 4-6-211 by Sec. 30, Ch. 387, L. 1975.

#### **Amendments**

The 1975 amendment renumbered this section; substituted "department" for "board"; and made a minor change in phraseology.

**4-6-301. (2815.47) Jurisdiction of courts.** As to misdemeanor actions, the district courts of this state shall have concurrent jurisdiction with justice of the peace courts in all prosecutions under this code.

**History:** En. Sec. 48, Ch. 106, L. 1933; amd. Sec. 16, Ch. 46, Ex. L. 1933; amd. Sec. 9, Ch. 166, L. 1951; Sec. 4-344, R. C. M. 1947; amd. and redes. 4-6-301 by Sec. 70, Ch. 387, L. 1975.

#### **Amendments**

The 1975 amendment renumbered this section; inserted "As to misdemeanor actions" at the beginning of the section; and made a minor change in phraseology.

**4-6-302. (2815.149) Appeals.** An appeal shall lie from any conviction or order made in the prosecution of any offense against any of the provisions of this code and the practice and procedure on any appeal from any such conviction or order, and all proceedings thereon shall be governed by the law applicable to appeal in criminal cases.

**History:** En. Sec. 89, Ch. 105, L. 1933; Sec. 4-224, R. C. M. 1947; amd. and redes. 4-6-302 by Sec. 38, Ch. 387, L. 1975.

#### **Amendments**

The 1975 amendment renumbered this section; and made a minor change in phraseology.



**4-6-303. (2815.139) Description of offense—sufficiency of.** In describing the offense respecting the sale or keeping for sale or other disposal of alcoholic beverages, or the having, keeping, giving, purchasing or the consumption of alcoholic beverages in any information, summons, conviction, warrant, or proceeding under this code, it shall be sufficient to state the sale or keeping for sale or disposal, having, keeping, giving, purchasing, or consumption of alcoholic beverages, simply without stating the name or kind of such alcoholic beverage or the price thereof, or any person to whom it was sold or disposed of, or by whom it was taken or consumed, or from whom it was purchased or received, and it shall not be necessary to state the quantity of alcoholic beverage so sold, kept for sale, disposed of, had, kept, given, purchased, or consumed, except in the case of offenses where the quantity is essential, and then it shall be sufficient to allege the sale or disposal of more or less than such quantity.

**History:** En. Sec. 80, Ch. 105, L. 1933; Sec. 4-214, R. C. M. 1947; amd. and redes. 4-6-303 by Sec. 31, Ch. 387, L. 1975.

**Amendments**

The 1975 amendment renumbered this

section; substituted references to alcoholic beverages for "liquor" throughout the section; and made minor changes in phraseology.

**4-6-304. (2815.140) Description of offense—sufficiency—defenses need not be negatived.** The description of any offense under this code, in the words of this code or in any words of like effect, shall be sufficient in law; and any exception, exemption, provision, excuse, or qualification, whether it occurs by way of proviso or in the description of the offense in this code, may be proved by the defendant, but need not be specified or negatived in the information or complaint; but if it is so specified or negatived, no proof in relation to the matter so specified nor negatived shall be required on the part of the informant or complainant.

**History:** En. Sec. 81, Ch. 105, L. 1933; Sec. 4-215, R. C. M. 1947; amd. and redes. 4-6-304 by Sec. 32, Ch. 387, L. 1975.

**Amendments**

The 1975 amendment renumbered this section; and made minor changes in phraseology.

**4-6-305. (2815.141) Sufficiency of evidence.** In any prosecution under this code for the sale or keeping for sale or other disposal of alcoholic beverages, or the having, keeping, giving, purchasing, or consuming of alcoholic beverages, it shall not be necessary that any witness should depose to the precise description or quantity of the alcoholic beverages sold, disposed of, kept, had, given, purchased, or consumed, or the precise consideration (if any) received therefor, or to the fact of the sale or other disposal having taken place with his participation or to his own personal or certain knowledge; but conviction may be based upon circumstantial evidence reasonably tending to establish the guilt of the accused beyond a reasonable doubt.

**History:** En. Sec. 82, Ch. 105, L. 1933; Sec. 4-216, R. C. M. 1947; amd. and redes. 4-6-305 by Sec. 33, Ch. 387, L. 1975.

**Amendments**

The 1975 amendment renumbered this section; and substituted "alcoholic beverages" for "liquor" throughout the section.

**4-6-306. (2815.142) Proof of violation—sufficiency.** In proving the sale, disposal, gift, or purchase, gratuitous or otherwise, or consumption



of alcoholic beverages, it shall not be necessary in any prosecution to show that any money actually passed or any alcoholic beverages was actually consumed, if the court hearing the case is satisfied that a transaction in the nature of a sale, disposal, gift, or purchase actually took place, or that any consumption of alcoholic beverages was about to take place; and proof of consumption or intended consumption of alcoholic beverages on premises on which such consumption is prohibited, by some person not authorized to consume an alcoholic beverage thereon, shall be evidence that such alcoholic beverage was sold or given to or purchased by the person consuming, or being about to consume, or carrying away the same, as against the occupant of the said premises.

**History:** En. Sec. 83, Ch. 105, L. 1933;  
Sec. 4-217, R. C. M. 1947; amd. and redes.  
4-6-306 by Sec. 34, Ch. 387, L. 1975.

#### **Amendments**

The 1975 amendment renumbered this section; and substituted references to alcoholic beverages for "liquor" throughout the section.

**4-6-307. (2815.143) Analyst's report as prima facie evidence of contents.** In any prosecution under this code, or the regulations made thereunder, production by a police officer, policeman, constable, inspector or peace officer, of a certificate or report signed or purporting to be signed by a United States or state analyst as to the analysis or ingredients of any alcoholic beverage or other fluid or any preparation, compound, or substance, such certificate or report shall be prima facie evidence of the facts stated in such certificate or report and of the authority of the person giving or making the same without any proof of appointment or signature.

**History:** En. Sec. 84, Ch. 105, L. 1933;  
Sec. 4-218, R. C. M. 1947; amd. and redes.  
4-6-307 by Sec. 35, Ch. 387, L. 1975.

#### **Amendments**

The 1975 amendment renumbered this section; substituted "alcoholic beverage" for "liquor" and made a minor change in phraseology.

**4-6-308. (2815.144) Presumption of intoxicating beverage arises, when.** The court trying a case shall, in the absence of proof to the contrary, be at liberty to infer that the alcoholic beverage in question is intoxicating from the fact that a witness described it as intoxicating, or by a name which is commonly applied to an intoxicating beverage.

**History:** En. Sec. 85, Ch. 105, L. 1933;  
Sec. 4-219, R. C. M. 1947; amd. and redes.  
4-6-308 by Sec. 36, Ch. 387, L. 1975.

#### **Amendments**

The 1975 amendment renumbered this section; and substituted references to alcoholic beverage for "liquor."

**4-6-309. (2815.145) Inferences from facts of code claimed to be violation.** Upon the hearing of any charge of selling or purchasing an alcoholic beverage, or of unlawfully having or keeping an alcoholic beverage, contrary to any of the provisions of this code, the court trying the case shall have the right to draw inferences of fact from the kind and quantity of alcoholic beverages found in the possession of the person accused, or in any building, premises, vehicle, motorcar, automobile, vessel, boat, canoe, conveyance, or place occupied or controlled by him, and from the frequency with which the alcoholic beverage is received thereat or

therein or is removed therefrom, and from the circumstances under which it is kept or dealt with.

**History:** En. Sec. 86, Ch. 105, L. 1933; Sec. 4-220, R. C. M. 1947; amd. and redes. 4-6-309 by Sec. 37, Ch. 387, L. 1975.

section; substituted references to alcoholic beverages for "liquor" throughout the section; and made a minor change in phraseology.

#### **Amendments**

The 1975 amendment renumbered this

**4-6-401. Premises where liquor illegally sold public nuisance.** Any room, house, building, boat, vehicle, structure or place where alcoholic beverages are knowingly manufactured, sold, or bartered in violation of this code or 94-8-107 and all property knowingly kept and used in maintaining the same is hereby declared to be a public nuisance, and any person who maintains such a nuisance shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than \$100 or more than \$500 and be imprisoned not less than 30 days or more than 6 months.

**History:** En. Sec. 8, Ch. 30, L. 1937; Sec. 4-238, R. C. M. 1947; amd. and redes. 4-6-401 by Sec. 43, Ch. 387, L. 1975; amd. Sec. 16, Ch. 496, L. 1977.

sance" for "common nuisance"; and made minor changes in phraseology, punctuation and style.

The 1977 amendment substituted "or more than \$500" near the end of the section for "nor more than five hundred dollars (\$500)"; and made minor changes in phraseology, punctuation and style.

#### **Amendments**

The 1975 amendment renumbered this section; substituted "alcoholic beverages" for "intoxicating liquor" near the beginning of the section; substituted "in violation of this code or section 9-8-107" for "in violation of the State Liquor Control Act of Montana"; substituted "public nuisance" for "common nuisance"; and made

#### **Repealing Clause**

Section 17 of Ch. 496, Laws 1977 read "Sections 4-1-305, 4-1-307, 4-4-106, and 4-6-206, R. C. M. 1947, are repealed."

**4-6-402. (2815.49) Action to enjoin nuisance—injunction—order of court—bond.** An action to enjoin any nuisance defined in this code may be brought in the name of the state of Montana by the attorney general of the state or by any county attorney. Such action shall be brought and tried as an action in equity and may be brought in any court having jurisdiction to hear and determine equity cases. If it is made to appear by affidavits or otherwise, to the satisfaction of the court, or judge in vacation, that such nuisance exists, a temporary writ of injunction shall forthwith issue restraining the defendant from conducting or permitting the continuance of such nuisance until the conclusion of the trial. If a temporary injunction is prayed for, the court may issue an order restraining the defendant and all other persons from removing or in any way interfering with the fixtures or other things used in connection with the violation of this act constituting such nuisance. No bond shall be required in instituting such proceedings. It shall not be necessary for the court to find the property involved was being unlawfully used as aforesaid at the time of the hearing, but on finding that the material allegations of the petition are true, the court shall order that no liquor or beer shall be manufactured, sold, or bartered in such room, house, building, boat, vehicle, structure, or place, or any part thereof. And upon judgment of the court ordering such nuisance to be abated, the court may order that the room, house, building, structure, boat, vehicle, or place shall not be occupied or used for one (1) year thereafter; but the court may,



in its discretion, permit it to be occupied or used if the owner, lessee, tenant, or occupant thereof shall give bond with sufficient surety, to be approved by the court making the order, in the penal and liquidated sum of not less than five hundred dollars (\$500), nor more than one thousand dollars (\$1,000), payable to the state of Montana, and conditioned that liquor or beer will not thereafter be manufactured, sold or bartered therein or thereon, and that he will pay all fines, costs, and damages that may be assessed for any violations of this code upon said property.

**History:** En. Sec. 48, Ch. 106, L. 1933; amd. Sec. 16, Ch. 46, Ex. L. 1933; Sec. 4-346, R. C. M. 1947; amd. and redes. 4-6-402 by Sec. 71, Ch. 387, L. 1975.

#### Amendments

The 1975 amendment renumbered this section; inserted "liquor or" before "beer" near the middle of the section, and also near the end of the section; and made minor changes in phraseology and style.

**4-6-403. (2815.25) Penalty for brewer's and wholesalers' failure to pay tax.** Any tax owed by a brewer or wholesaler under this code not paid within the time herein provided for shall be delinquent and a penalty of five per cent (5%) thereof shall be added thereto and the whole thereof shall bear interest at the rate of one per cent (1%) per month from the date of delinquency until paid, and any brewer or wholesaler who fails, neglects or refuses to make the return to the department provided for in sections 4-3-203 or 4-3-213, or refuses to allow such examination as provided for in sections 4-3-203 or 4-3-213, or fails to make an accurate return according to the manner prescribed, shall be deemed guilty of having committed a misdemeanor and upon conviction thereof shall be fined in an amount not exceeding one thousand dollars (\$1,000.00).

**History:** En. Sec. 16, Ch. 106, L. 1933; amd. Sec. 2, Ch. 220, L. 1939; Sec. 4-320, R. C. M. 1947; amd. and redes. 4-6-403 by Sec. 58, Ch. 387, L. 1975.

#### Amendments

The 1975 amendment renumbered this section; deleted an introductory sentence

requiring payment of tax; inserted "owed by a brewer or wholesaler under this code" after "tax" at the beginning of the section; inserted "brewer or" before "wholesaler who fails" near the middle of the section; substituted "sections 4-3-203 or 4-3-213" for "section 4-319" in two places; and made minor changes in phraseology.

**4-6-404. Penalty for violating act—revocation of license.** Any person violating any of the provisions of this code, shall upon conviction thereof, be deemed guilty of a misdemeanor and punishable by such fine or imprisonment, or both, as provided in section 95-2206.3, R. C. M. 1947, except as is herein otherwise provided. If any retail licensee is convicted of any offense under this code his license shall be immediately revoked, or in the discretion of the department such other sanction imposed as may be authorized under section 4-4-402. Further, if any person under the age of eighteen (18) is convicted of an offense under this code he shall be subject to a one hundred dollar (\$100) fine or thirty (30) days in confinement. It shall be further mandatory under the provisions of this code that all licensees display in a prominent place in his premises a placard as issued by the department stating fully the consequences for violations by persons under the age of eighteen (18) years of the provisions of this code.



Any person who invites a person under the age of eighteen (18) years into a public place where an alcoholic beverage is sold and treats, gives or purchases an alcoholic beverage for such person, or permits such person in a public place where an alcoholic beverage is sold to treat, give or purchase liquor for him, or holds out such person to be over the age of eighteen (18) years to the owner of the establishment, or his or her employee or employees, shall be guilty of a misdemeanor.

**History:** En. Sec. 38, Ch. 84, L. 1937; amd. Sec. 2, Ch. 226, L. 1947; amd. Sec. 1, Ch. 161, L. 1951; amd. Sec. 5, Ch. 240, L. 1971; amd. Sec. 6, Ch. 94, L. 1973; Sec. 4-439, R. C. M. 1947; amd. and redes. 4-6-404 by Sec. 104, Ch. 387, L. 1975.

#### Amendments

The 1971 amendment reduced the age specified throughout the section from 21 to 19 years, and made a minor change in style.

The 1973 amendment reduced the age specified throughout the section from nineteen to eighteen years.

The 1975 amendment renumbered this section; substituted "as provided in section 95-2206.3, R. C. M. 1947" for "as provided by law" near the beginning of the section; inserted "retail" before "licensee" near the beginning of the second sentence in the first paragraph; substituted "such other sanction imposed as may be authorized under section 4-4-402" for "suspended temporarily for a time to be determined by the board" in the middle of the first paragraph; substituted "alcoholic beverage" for "liquor" throughout the section; substituted "department" for "board" throughout the section; and made minor changes in phraseology.

#### Renumbering of Code Sections

Section 120 of Ch. 387, Laws 1975 read "The following sections of the Revised Codes of Montana 1947 are renumbered as

follows: 4-114.1 is renumbered 4-2-202; 4-114.2 is renumbered 4-2-203; 4-119 is renumbered 4-2-102; 4-151 is renumbered 4-3-101; 4-169 is renumbered 4-3-105; 4-170 is renumbered 4-3-103; 4-172 is renumbered 4-6-105; 4-206 is renumbered 4-6-107; 4-207 is renumbered 4-6-108; 4-241 is renumbered 4-1-402; 4-315 is renumbered 4-3-205; 4-317.2 is renumbered 4-3-207; 4-317.3 is renumbered 4-3-208; 4-317.4 is renumbered 4-3-209; 4-317.5 is renumbered 4-3-210; 4-317.6 is renumbered 4-3-211; 4-322 is renumbered 4-3-215; 4-323 is renumbered 4-3-216; 4-324 is renumbered 4-1-404; 4-329 is renumbered 4-3-303; 4-403.1 is renumbered 4-4-205; 4-408.2 is renumbered 4-4-305; 4-506 is renumbered 4-5-101; 4-512 is renumbered 4-5-106."

#### Repealing Clause

Section 121 of Ch. 387, Laws 1975 read: "Sections 4-102, 4-104, 4-105, 4-106, 4-110, 4-111, 4-115, 4-118, 4-134, 4-135, 4-136, 4-137, 4-138, 4-142, 4-143, 4-144, 4-145, 4-146, 4-147, 4-148, 4-149, 4-159, 4-163, 4-167, 4-173, 4-201, 4-202, 4-203, 4-204, 4-205, 4-221, 4-222, 4-223, 4-227, 4-228, 4-230, 4-232, 4-234, 4-235, 4-236, 4-237, 4-239, 4-302, 4-305, 4-306, 4-307, 4-312, 4-314, 4-317.8, 4-337, 4-339, 4-345, 4-350, 4-351, 4-352, 4-353, 4-354, 4-355, 4-356, 4-402, 4-405, 4-409, 4-414, 4-424, 4-425, 4-431, 4-432, 4-433, 4-434, 4-435, 4-436, 4-437, 4-438, 4-441, 4-501, 4-502, 4-503, 4-504, 4-505, 4-513, and 4-514, R. C. M. 1947, are repealed."



## TITLE 5—BANKS AND BANKING

### Chapter

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### CHAPTER 1—THE BANK ACT—DEFINITION OF TERMS

#### Section

- 5-102. Institutions to which act is applicable.  
5-106. Trust company defined—purposes for which may be formed.  
5-109. Definition of words and terms.

**5-102. (6014.2) Institutions to which act is applicable.** (1) The word "bank" as used in this title, means any corporation which has been incorporated to conduct the business of receiving money on deposit or transacting a trust or investment business, as defined in this title.

(2) The soliciting, receiving, or accepting of money or its equivalent on deposit as a regular business is doing a commercial or savings bank business, whether such deposit is made subject to check or is evidenced by a certificate of deposit, a passbook, a note, or other receipt, provided that nothing herein applies to or includes money or its equivalent left in escrow or left with an agent pending investment in real estate or securities for or on account of his principal.

(3) It is unlawful for any corporation, partnership, firm, or individual to engage in or transact a banking business within this state, except by means of a corporation duly organized for such purpose.

(4) Banks are divided into the following classes:

- (a) commercial banks;
- (b) savings banks;
- (c) trust companies;
- (d) investment companies.



(5) This title does not apply to any investment company or corporation established prior to March 8, 1927, under authority of the law of Montana not accepting, receiving, or holding money on deposit.

**History:** En. Sec. 2, Ch. 89, L. 1927; amd. Sec. 1, Ch. 71, L. 1977.

#### Amendments

The 1977 amendment inserted subsection designations (1) through (5); deleted "provided, further, however, that this act shall not apply to any person, firm or association now doing a private banking business; provided, however, that said

private banks hereinabove referred to shall come under all of the provisions of this act which may be fairly applicable thereto" from the end of subdivision (4) (d); substituted "established prior to March 8, 1927" for "heretofore established" in subsection (5); and made minor changes in phraseology, punctuation and style.

**5-106. (6014.6) Trust company defined—purposes for which may be formed.** The term "Trust Company," when used in this act, means any corporation which is incorporated under the laws of this state for any one or more of the following purposes:

1 to 4. \* \* \* [Same as parent volume.]

5. To accept from and execute trusts for married persons in respect to their individual property, whether real or personal, and act as agents for them in the management of such property, and generally to have and exercise such powers as are usually had and exercised by trust companies.

6 to 9. \* \* \* [Same as parent volume.]

**History:** En. Subd. c, Sec. 4, Ch. 89, L. 1927; amd. Sec. 18, Ch. 293, L. 1975.

#### Amendments

The 1975 amendment substituted "mar-

ried persons" for "married women" in subdivision 5; and made a minor change in phraseology.

### 5-108. (6014.8) Repealed.

#### Repeal

Section 5-108 (Subd. e, Sec. 4, Ch. 89, L. 1927), relating to definitions of unincor-

porated bank and private bank, was repealed by Sec. 176, Ch. 431, L. 1975.

**5-109. (6014.9) Definition of words and terms.** Unless the context requires otherwise, in this act:

(1) "Capital," "capital stock," and "paid-in capital" mean that fund for which certificates of stock are issued to stockholders.

(2) "Surplus" means a fund paid in or created under this act by a bank from its net earnings or undivided profits, which when set apart and designated as such, is not available for the payment of dividends and cannot be used for the payment of expenses or losses so long as such bank has undivided profits.

(3) "Undivided profits" means the credit balance of the profit and loss account of a bank.

(4) "Profit and loss account" or "profit and loss" means that account carried on the books of the bank into which all earnings accounts and recoveries are closed, thus exhibiting "gross earnings" and against which all loss and other disbursement items are charged revealing "net earnings" which are then properly closed to "undivided profits accounts" or "undivided profits," out of which dividends are paid and reserves set aside.

(5) "Net earnings" means the excess of the gross earnings of a bank over expenses and losses chargeable against those earnings during any one year.

(6) "Time deposits" means all deposits, the payment of which cannot legally be required within thirty (30) days.

(7) "Demand deposits" means all deposits, the payment of which can legally be required when demanded.

(8) "Consolidate" and "merge" mean the same thing and may be used interchangeably in this act.

(9) "Department" means the department of business regulation provided for in Title 82A, chapter 4.

(10) "Board" means the state banking board provided for in section 82A-407.

**History:** En. Sec. 5, Ch. 89, L. 1927; amd. Sec. 1, Ch. 431, L. 1975.

designations from letters to numbers; deleted former subdivision (i) defining "superintendent"; and added subdivisions (9) and (10). For prior version, see parent volume.

#### **Amendments**

The 1975 amendment inserted the introductory phrase; changed the subdivision

## **CHAPTER 2—ORGANIZATION AND INCORPORATION OF BANKS**

### **Section**

5-202. Presentation of articles to department of business regulation—secretary of state to issue certificate—when body corporate.

5-202.1. Board to refuse or approve application.

5-203. Filing of certificate and articles of agreement.

5-208. Board of directors—qualifications, tenure, and vacancies.

5-210. Selection of officers and employees—meetings and minutes.

5-214. Change of place of business and number of directors authorized.

5-216. Certificate of proceedings—contents and effect.

5-217. Change in number of directors—procedure—approval by department.

**5-202. Presentation of articles to department of business regulation—secretary of state to issue certificate—when body corporate.** The articles of agreement shall be presented to the department of business regulation, together with an application in writing in the form prescribed by the department for a certificate authorizing the proposed corporation to transact within this state the business specified in the articles of agreement. Upon the presentation of the articles of agreement, together with the application, the department shall ascertain whether the requisite capital of the bank has been subscribed and been paid up in cash. It shall also determine whether the corporation is being formed for any other purpose than the legitimate business contemplated by this act, or whether the public convenience and advantage will be promoted by the opening of the bank. It shall determine whether the corporate name assumed by the bank, by reason of the use of any one or more of the words "commercial," "trust," "savings," or "investment," in conjunction with any other word or words, resembles so closely the name of any other bank previously formed under this act as to be likely to cause confusion. The department shall also ascertain from the best sources of information at its command whether the character and general fitness of the persons named as stock-

holders command confidence of the community in which the bank is proposed to be located. The expenses of the department in making the examination required by this section shall be paid by the proposed bank, and payment shall be made in advance if required by the department. All information gathered by the department under this section shall be transmitted to the board for its use in conducting hearings on applications for certificates of authorization.

**History:** Enacted as part of Sec. 6, Ch. 89, L. 1927; amd. Sec. 2, Ch. 431, L. 1975.

#### Amendments

The 1975 amendment substituted references to the department of business regulation for references to the superintendent of banks throughout the section; deleted "examine or cause an examination to be made in order to" before "ascertain" near the end of the second sentence; added the final sentence providing transmission and use of information by the state banking board; and made numerous changes in style and phraseology.

#### Due Process

Protestant bank has no statutory right to a hearing or to an adversary, trial-type hearing with an opportunity to examine and cross-examine witnesses or to elicit disclosure of confidential information from the superintendent of banks so that it might have an opportunity to answer in proceeding where superintendent of banks conditionally approves a state bank charter application based on confidential information. *Miners & Merchants Bank v. Dowdall*, 158 M 142, 489 P 2d 1274. (Decision prior to enactment of sec. 5-612).

**5-202.1. Board to refuse or approve application.** The board may refuse or approve an application for a certificate of authorization in accordance with 5-610 through 5-614.

**History:** En. 5-202.1 by Sec. 3, Ch. 431, L. 1975; amd. Sec. 2, Ch. 71, L. 1977.

#### Title of Act

An act for the codification and general revision of the laws relating to the department of business regulation.

#### Amendments

The 1977 amendment substituted "5-610 through 5-614" for "sections 5-607 through 5-614" at the end of the section.

**5-203. Filing of certificate and articles of agreement.** The articles of agreement, together with one of the certificates of authorization, issued by the department, shall be filed in the office of the clerk and recorder of the county in which is located the principal place of business of the proposed bank. A certified copy of the articles of agreement, together with the certificate of authorization, shall be filed with the secretary of state. Upon filing with the secretary of state the articles of agreement and the certificate of authorization, and paying the fee required for the filing of articles of incorporation, the secretary of state shall issue a certificate setting forth that the corporation has been duly organized, the amount of its authorized and subscribed capital, and the business in which it is to engage. This certificate shall be taken by all courts of this state as evidence of the corporate existence of the bank. The persons signing and acknowledging the articles of agreement, and their associates and successors, are then a body corporate with power of continual succession, and by that name they and their successors are entitled to have, possess, and enjoy all the rights and privileges conferred by this act.

**History:** Enacted as part of Sec. 6, Ch. 89, L. 1927; amd. Sec. 4, Ch. 431, L. 1975.

#### Amendments

The 1975 amendment deleted former first and second sentences which provided

for approval or disapproval of applications within sixty days; substituted "department" for "superintendent of banks" and made numerous changes in style and phraseology. For prior version, see parent volume.



**5-205 to 5-207.**

**Compiler's Notes**      substituted "department" in these sections for  
 Section 170, Ch. 431, Laws 1975, substi-      "superintendent of banks."

**5-208. (6014.14) Board of directors—qualifications, tenure, and vacancies.** The affairs of the bank shall be managed by a board of directors, not less than three (3) or more than eleven (11) in number, all of whom shall be stockholders of the bank and citizens of the United States, and of whom at least two-thirds ( $\frac{2}{3}$ ) must be residents of this state. A person who has been convicted of a crime against the banking laws of the United States or of any state may not be elected a director. The directors shall be elected for a term of one (1) year at the annual meeting of the stockholders, which shall be held on the second Tuesday in January of each year. If the election is not held on the day fixed for the annual meeting, the corporation may not thereby be dissolved, but an election may be held at any other time agreeable to the bylaws of the corporation, and the persons so elected shall hold their office until the second Tuesday of the following January, or until others are elected and qualified. In case of death or resignation of one or more of the directors, the vacancy shall be filled by the board, and the directors so appointed shall hold office until the next annual election. Every director shall take and subscribe an oath that he will diligently and honestly perform his duty in the office, that he will not knowingly violate or permit a violation of any of the provisions of this act, and that he is the owner in good faith of the required number of shares of stock in the bank standing in his name on the books of the bank. The oaths shall be made in duplicate, one copy of which shall be transmitted to the department and filed in its office, and one copy shall be kept on file in the office of the bank.

**History:** En. Sec. 10, Ch. 89, L. 1927; amd. Sec. 1, Ch. 78, L. 1957; amd. Sec. 5, Ch. 431, L. 1975.

**Amendments**

The 1975 amendment deleted "at which time a director shall be elected to fill out

the unexpired term" from the end of the fifth sentence; substituted references to the department for references to the superintendent of banks in the last sentence; and made numerous changes in style and phraseology. For prior version, see parent volume.

**5-209. (6014.15) Director must own not less than one thousand dollars, etc.**

**Compiler's Notes**      substituted "department" in this section for  
 Section 170, Ch. 431, Laws 1975, substi-      "superintendent of banks."

**5-210. (6014.16) Selection of officers and employees—meetings and minutes.** The board of directors may elect a president, one or more vice-presidents, cashier, and one or more assistant cashiers, and other officers and employees which they may from time to time consider to be to the best interest of the bank, and fix their compensation. The president and at least one vice-president shall be chosen from the board of directors. The board of directors shall also elect a secretary, who shall keep a correct report of the meetings of the board and of the stockholders in a book kept for that purpose, which minutes shall particularly disclose the date of the meetings and the names of the directors or stockholders present. This record of the meetings of the board of directors shall be subscribed to by the

presiding officer and secretary. The minutes shall be read and approved at the following meeting of the board of directors, and the minutes of the following meeting shall show that fact. The minute-book shall be kept in the office of the bank at all times, and shall be presented to the department at the time of its examination of the books. The department shall include in its report of examination of the bank a statement of the dates on which the meetings were held since the last examination of the bank by it, and the names of the directors in attendance at each of those meetings. The board of directors of a bank must hold a meeting at least once a month. A person who makes a false entry in the book, or who changes or alters an entry made in it, is guilty of a misdemeanor.

**History:** En. Sec. 12, Ch. 89, L. 1927; amd. Sec. 6, Ch. 431, L. 1975.

#### **Amendments**

The 1975 amendment substituted refer-

ences to the department for references to the examiner in the sixth and seventh sentences; and made numerous changes in phraseology and style. For prior version, see parent volume.

### **5-211. (6014.17) Bylaws.**

#### **Compiler's Notes**

Section 170, Ch. 431, Laws 1975, substi-

tuted "department" in this section for "superintendent of banks."

**5-214. (6014.20) Change of place of business and number of directors authorized.** A bank may, upon approval of the board, change its principal place of business from one place to another, in the same county, or in an adjacent county, within this state, and may increase or diminish the number of trustees or directors in the manner provided in sections 5-215 through 5-217.

**History:** En. Sec. 16, Ch. 89, L. 1927; amd. Sec. 7, Ch. 431, L. 1975.

#### **Amendments**

The 1975 amendment deleted "now organized and existing, or which may here-

after be organized" after "Every bank" at the beginning of the section; substituted "board" for "superintendent of banks"; and substituted "provided in sections 5-215 through 5-217" for "hereinafter provided."

**5-216. (6014.22) Certificate of proceedings—contents and effect.** If, at the time and place specified in the notice provided for in section 5-215, stockholders appear in person or by proxy representing not less than two-thirds ( $\frac{2}{3}$ ) of all the shares of stock of the corporation, and organize by choosing one of the trustees or directors chairman of the meeting and also a suitable person for secretary, and proceed to a vote of those present in person or by proxy, and if two-thirds ( $\frac{2}{3}$ ) of the votes representing all the outstanding capital stock have been cast in favor of increasing or diminishing the amount of capital stock, or of changing its corporate name, or of changing its principal place of business, a certificate of the proceedings showing a compliance with the provisions of this act, the amount of capital stock actually paid in, the whole amount of debts and liabilities of the corporation, the amount to which the capital stock shall be increased or diminished, or the change in the corporate name of the corporation, or the change in the principal place of business, shall be made out, signed, and verified by the affidavit of the chairman, and be countersigned by the secretary, and the certificate shall be acknowledged by the chairman. The



certificate shall then be sent to the department which shall within thirty (30) days of receipt either approve or reject the application for change. The action of the department on the application is final. If it approves the certificate it shall notify the bank at which time the certificate shall be filed in the office of the county clerk and recorder of the county in which the bank is located and in the office of the secretary of state. Upon the filing, the change is effective.

**History:** En. Sec. 18, Ch. 89, L. 1927; amd. Sec. 8, Ch. 431, L. 1975.

#### Amendments

The 1975 amendment inserted "outstanding" before "capital stock" in the first

part of the first sentence; substituted references to the department for references to the superintendent of banks throughout the section; and made minor changes in punctuation and phraseology.

**5-217. (6014.23) Change in number of directors — procedure — approval by department.** (1) A state bank or trust company may increase or diminish the number of its directors or may provide that the number of directors elected at each annual meeting, within the limits specified in this act, shall constitute the board for the year, with all vacancies to be filled by the board taking the action, and also may provide that a majority of the full board of directors may increase the number of the directors of the bank, not exceeding two (2) within the limits specified in this act, and appoint persons to fill the resulting vacancies between meetings of the stockholders by amending its articles of incorporation at any regular annual meeting, or at any special meeting called and noticed for that purpose, of the stockholders of the bank or trust company. However, the number of directors may not at any time be less than three (3) or more than eleven (11).

(2) When a bank or trust company decides to call a special meeting of the stockholders for the purpose of amending its articles of incorporation relative to the number of directors, written or printed notice of the meeting must be deposited in the post office addressed to each stockholder of record entitled to vote at the meeting under the articles of incorporation or amendments to them, and the laws and constitution of Montana, at his last known place of residence at least ten days previous to the date set for the holding of the meeting. In addition, the notice must be published once a week for two consecutive weeks in a newspaper published in the county where the principal place of business of the corporation is situated. If no newspaper is published in the county it is not necessary to publish the notice. However, the matter of amending the articles of incorporation to change the number of directors may be submitted to and acted upon at any annual meeting of the stockholders without special notice.

(3) If at the time and place specified in the notice of the special meeting or at the annual meeting of the stockholders, stockholders representing two-thirds ( $\frac{2}{3}$ ) of all the shares of stock of the corporation appear in person or by proxy and vote in favor of the amendment, a certificate of the proceedings showing a compliance of the provisions of this act and the amendment relative to the number of directors shall be prepared, certified and sworn to and filed with the department. The department shall, within thirty (30) days after the receipt of the certificate, either approve or reject



the amendment. The action of the department on the amendment is final. If it approves the amendment, it shall notify the bank, whereupon the certificate with the department's approval attached to it shall be filed in the office of the county clerk and recorder of the county in which the bank is situated, and a certified copy of it shall be filed in the office of the secretary of state. Upon the filing of the certified copy with the secretary of state, the amendment becomes effective.

**History:** En. Sec. 19, Ch. 89, L. 1927; amd. Sec. 1, Ch. 145, L. 1931; amd. Sec. 1, Ch. 131, L. 1937; amd. Sec. 2, Ch. 7, L. 1965; amd. Sec. 9, Ch. 431, L. 1975.

#### Amendments

The 1975 amendment inserted the subsection designations; substituted "department" for "superintendent of banks" throughout the section; and made numerous minor changes in phraseology, punctuation and style.

### CHAPTER 3—DISSOLUTION AND DISINCORPORATION OF BANKS

#### Section

5-301. Dissolution and disincorporation.

**5-301. (6014.24) Dissolution and disincorporation.** Commercial banks, savings banks, trust companies, and investment companies may be dissolved in the manner provided by the laws of this state applicable to the dissolution of other corporations. However, a bank or trust company may, upon a vote of two-thirds ( $\frac{2}{3}$ ) of its stockholders at a special meeting called for that purpose in accordance with its bylaws, voluntarily quit business and liquidate upon the payment of its debts, exclusive of liability to stockholders, or upon agreement with all of its creditors to a plan of liquidation. A bank or trust company desiring to voluntarily liquidate shall apply to the department of business regulation for permission to so liquidate and, in addition to complying with the laws of this state governing the liquidation of corporations, shall comply in all respects with the requirements or rules of the department governing voluntary dissolution. The board of directors of a bank, whose stockholders have voted to place it in voluntary liquidation, shall appoint a liquidating agent to wind up the affairs of the bank. The liquidating agent, on authority of the board of directors, may execute deeds for the transfer of real property and do all things necessary to carry out the proper liquidation of the bank. Nothing in this section prevents the department from taking charge at any time when in its opinion the interest of creditors or stockholders is not being protected. The decision of the department in these matters is controlling.

**History:** En. Sec. 20, Ch. 89, L. 1927; amd. Sec. 2, Ch. 145, L. 1931; amd. Sec. 1, Ch. 10, L. 1935; amd. Sec. 10, Ch. 431, L. 1975.

#### Amendments

The 1975 amendment deleted "now organized and existing, or which may be

hereafter organized" after "investment companies" near the beginning of the section; substituted references to department of business regulation for "state superintendent of banks" throughout the section; and made minor changes in phraseology, punctuation and style.

### CHAPTER 4—STOCKHOLDERS' LIABILITY

#### Section

5-403. Scope of term "liquidating officer"—department of business regulation to file inventory with district court—report.

**5-403. Scope of term "liquidating officer"—department of business regulation to file inventory with district court—report.** (1) For the purpose of this section the term "liquidating officer" includes every person legally empowered to liquidate the business and affairs of a state bank, whether the liquidation is by the department of business regulation or its deputies and agents. The term also includes all receivers of state banks qualified to liquidate a state bank under any law of this state.

(2) The liquidating officer of a bank may decide when the assets of a failed bank are not sufficient to pay the debts, contracts, engagements, and liabilities, and he may determine the question of the time when and the court where necessary legal proceedings shall be conducted, subject to the general provisions of law governing venue and place of trial.

(3) The provisions of this chapter do not impose any liability on a stockholder of a bank which is a member of the federal deposit insurance corporation.

(4) The department shall, within 90 days after taking charge of an insolvent bank, file with the district court having jurisdiction a complete inventory of all of the property and assets of the insolvent bank, such as furniture, fixtures, real estate, mortgages, bonds, and notes, secured and unsecured. It shall also every 6 months, or more often if required by the court, file with the court a report showing the status of the liquidation of the bank, the assets that have been liquidated and collected, the amounts and manner of payments made to creditors, the manner in which claims have been handled, and the assets on hand. The report shall contain other information the court requires, so that the court and the public may be apprised of the condition of the bank and the manner in which it is being liquidated with respect to the collection and sale of assets belonging to the bank and the manner in which claims are being paid. The report and account shall be set for hearing upon the notice the court may require and, if found to be correct, shall be approved by the court.

**History:** Enacted as part of Sec. 21, Ch. 89, L. 1927; amd. Sec. 1, Ch. 110, L. 1935; amd. Sec. 11, Ch. 431, L. 1975; amd. Sec. 3, Ch. 71, L. 1977.

the section; and made minor changes in phraseology, punctuation and style.

The 1977 amendment inserted subsection designations; substituted "status of the liquidation" for "conditions of the liquidation" in the middle of the second sentence of subsection (4); and made minor changes in phraseology, punctuation and style.

#### **Amendments**

The 1975 amendment substituted references to department of business regulation for "superintendent of banks" throughout

## **CHAPTER 5—MISCELLANEOUS REGULATORY PROVISIONS**

### **Section**

5-504. Real estate which banks may purchase, hold, or convey.

5-506. Limitation on real estate loans.

5-508. When advertising as bank prohibited—trade names restricted.

5-508.1. Registered bank holding companies may use word "bank" in name or title.

5-509. Capital stock to be paid up—action by department—certain advertising prohibited.

5-517. Limit on amount of bond issue.

5-518. Disposition of acquired stock.

5-519. Fraud by director, officer, or employee.

5-523. Limitations on loans—liabilities—what included therein—reduction when excessive.

- 5-527. Interest not to exceed lawful rate—permissible charges on installment loans.  
 5-530. Deposit by minor.  
 5-532. Reserve requirements.  
 5-533. Borrowed money.

**5-504. (6014.29) Real estate which banks may purchase, hold, or convey.** (1) A bank organized under the provisions of this act may purchase, hold, or convey real estate which:

(a) is necessary for the proper transaction of its business, but it shall not invest an amount exceeding 50% of its paid-up capital and surplus in the lot and building in which the business of the company is carried on, furniture, equipment and fixtures, vaults and safety vaults, and boxes necessary or proper to carry on its banking business;

(b) is mortgaged to it in good faith by way of security for loans previously made or moneys due to the bank;

(c) is conveyed to it in satisfaction of debts previously contracted in the course of its business;

(d) it purchases at sales under judgments, decrees, or mortgages held by the bank.

(2) Real estate acquired in the manner set forth in subsections (1)(c) and (1)(d) of this section may not be held longer than 5 years from the date of acquisition, unless special written permission to do so is granted by the department. The real estate shall be carried on the books of the bank for an amount not greater than its cost to the bank, including costs of foreclosure and other expenses of acquiring title.

History: En. Sec. 25, Ch. 89, L. 1927; amd. Sec. 12, Ch. 431, L. 1975; amd. Sec. 4, Ch. 71, L. 1977.

subsection (2); and made numerous changes in phraseology, punctuation and style.

#### Amendments

The 1975 amendment inserted the subsection designations; redesignated subdivisions 1 to 4 as subdivisions (a) to (d) of subsection (1); inserted "equipment" after "furniture" in subdivision (1)(a); substituted "department of business regulation" for "superintendent of banks" in

The 1977 amendment substituted "bank" for "corporations" at the end of subdivision (1)(b); substituted "bank" for "company" at the end of subdivision (1)(d); deleted "of business regulation" after "department" at the end of the first sentence of subsection (2); and made minor changes in phraseology and style.

**5-506. (6014.31) Limitation on real estate loans.** (1) A bank organized under the laws of this state may make real estate loans secured by first liens upon improved real estate, including improved farm land and improved business and residential properties, and may purchase an obligation so secured when the entire amount of the obligation is sold to the bank. The amount of the loan may not exceed 50% of the appraised value of the real estate offered as security, and the loan may not be made for a longer period than 5 years, except that:

(a) the loan may be made in an amount not to exceed 60% of the appraised value of the real estate offered as security and for a term not longer than 20 years if the loan is secured by an amortized mortgage, deed of trust, or similar instrument, under the terms of which the installment payments are sufficient to amortize 40% or more of the principal of the loan within not more than 20 years; and



(b) a bank may not make those loans in an aggregate sum in excess of the amount of its capital stock paid in and unimpaired plus the amount of its unimpaired surplus or in excess of 60% of the amount of its time and saving deposits, whichever is greater.

(2) Loans made to finance the construction of residential or farm buildings and having maturities of not to exceed 6 months, whether or not secured by a mortgage or a similar lien on real estate upon which the residential or farm building is being constructed, are not loans secured by real estate within the meaning of this section but shall be classed as ordinary commercial loans. A bank may not invest in or be liable on any of those loans in an aggregate amount in excess of 50% of its actually paid-in and unimpaired capital.

(3) Loans made to establish rural or commercial businesses, which are in whole or in part discounted or loaned against as security by a federal reserve bank for any part of which a commitment has been made by a federal reserve bank or in which an agency of the federal government cooperated or purchased a participation in, are not subject to the restrictions or limitations of this section upon loans secured by real estate. A bank in this state has from time to time the same authority to make loans upon real estate which may be given by acts of congress or the federal reserve system to national banks or bank members of the federal reserve system.

(4) The limitations and restrictions imposed by this section do not prevent the renewal or extension of loans made before February 18, 1941, and do not apply to real estate loans which are insured under the provisions of any act of congress. Those limitations and restrictions do not apply to the making, extension, or renewal of any loans made under subchapter II of the act of congress known as the Servicemen's Readjustment Act of 1944 or any amendment or supplement to that act.

(5) This section, however, does not prevent a bank from taking another and immediately subsequent mortgage or deed of trust when it already holds a first mortgage or deed of trust on the real estate or from accepting a second lien on real estate to secure the repayment of a debt previously contracted in good faith. These provisions do not prevent subsequent liens of any kind from being taken to secure the payment of a debt previously contracted in good faith when, in the judgment of the directors of the bank, the subsequent liens are necessary further to secure the payment of any debts and save the bank from loss.

**History:** En. Sec. 27, Ch. 89, L. 1927; amd. Sec. 1, Ch. 23, L. 1941; amd. Sec. 1, Ch. 90, L. 1945; amd. Sec. 1, Ch. 25, L. 1959; amd. Sec. 13, Ch. 431, L. 1975; amd. Sec. 5, Ch. 71, L. 1977.

#### Amendments

The 1975 amendment inserted the designations for subsections (1), (2), (3) and (5); redesignated former subdivision (3) as subsection (4); redesignated former subdivisions (1) and (2) as (1)(a) and (1)(b); substituted "an agency of the fed-

eral government" for "Reconstruction Finance Corporation" in subsection (3); substituted "loans made before February 18, 1941" for "loans heretofore made" in subsection (4); substituted "sections 5-104 to 5-107" for "sections 5-104 to 5-108" at the end of subsection (5); and made numerous minor changes in phraseology, punctuation and style.

The 1977 amendment deleted "commercial" before "bank" throughout the section; deleted a sentence at the end of subsection (5) reading "Commercial bank"

as used in this section means a bank or changes in phraseology, punctuation and organized to do only the business specified in style. sections 5-104 to 5-107"; and made minor

**5-508. (6014.33) When advertising as bank prohibited—trade names restricted.** (1) A person, firm, company, partnership, or corporation, either domestic or foreign, not subject to the supervision of the department and not required by the provisions of this act to report to it and which has not received a certificate to do a banking business from the department, may not:

(a) advertise that he or it is receiving or accepting money or savings for deposit, investment, or otherwise and issuing notices or certificates of deposit therefor; or

(b) use an office sign at the place where the business is transacted having on it an artificial or corporate name or other words indicating that:

(i) the place or office is the place or office of a bank or trust company;

(ii) deposits are received there or payments made on checks; or

(iii) any other form of banking business is transacted there.

(2) That person, firm, company, partnership, or corporation, domestic or foreign, may not use or circulate letterheads, billheads, blank notes, blank receipts, certificates, or circulars, or any written or printed or partly written and partly printed paper whatever, having on them an artificial or corporate name or other word or words indicating that the business is the business of a bank, savings bank, or trust or investment company.

(3) That person, firm, company, partnership, or corporation or any agent of a foreign corporation not having an established place of business in the state may not solicit or receive deposits or transact business in the way or manner of a bank, savings bank, trust, or investment company or in a manner which leads the public to believe that its business is that of a bank, savings bank, trust, or investment company.

(4) A person, firm, company, partnership, or corporation, domestic or foreign, not subject to the supervision of the department and not required by the provisions of this act to report to it and which has not received from the department a certificate to do a banking business, may not transact business under a name or title which contains the word "bank", "banker", "banking", "savings bank", "saving", "trust", "trustee", "trust company", or "investment company".

(5) A person, firm, company, partnership, or corporation, domestic or foreign, violating a provision of this section shall forfeit to the state \$100 a day for every day or part of a day during which the violation continues.

(6) Upon suit by the department, the court may issue an injunction restraining that person, firm, company, partnership, or corporation during pendency of the action and permanently from further using those words in violation of the provisions of this section or from further transacting business in a manner which leads the public to believe that its business is that of a bank, savings bank, trust, or investment company and may enter any other order or decree as equity and justice require.

History: En. Sec. 29, Ch. 89, L. 1927; amd. Sec. 14, Ch. 431, L. 1975; amd. Sec. 6, Ch. 71, L. 1977.

#### Amendments

The 1975 amendment substituted "department" for "superintendent of banks" throughout the section; and made numer-

ous minor changes in phraseology, punctuation and style.

The 1977 amendment inserted the subsection and subdivision designations; substituted "partnership" for "copartnership" throughout the section; and made minor changes in phraseology, punctuation and style.

**5-508.1. Registered bank holding companies may use word "bank" in name or title.** Nothing contained in section 5-508 shall prohibit use of the word "bank" in the name or title of any bank holding company registered with the board of governors of the federal reserve system pursuant to Title 12, United States Code, section 1844, and such use of the word "bank" is hereby authorized.

History: En. 5-508.1 by Sec. 1, Ch. 217, L. 1977.

#### Title of Act

An act to authorize use of the word "bank" in the name or title of any bank holding company registered with the federal reserve system.

**5-509. (6014.34) Capital stock to be paid up—action by department—certain advertising prohibited.** A person, firm, company, copartnership, or corporation, domestic or foreign, advertising that he or it is receiving or accepting money or savings, and issuing notes or certificates of deposit for them, or advertising that he or it is transacting the business of a bank, savings bank, or trust company, or making use of an office sign at the place where the business is transacted, having on it an artificial or corporate name, or other words indicating that the place or office is the place or office of a bank, savings bank, or trust company, or that deposits are received there or payments made on check or that interest is paid on deposits, or that certificates of deposit, either with or without interest, are being issued or that any other form of banking business is transacted, and a person, firm, company, copartnership or corporation, domestic or foreign, using or circulating any letterheads, bill-heads, blank notes, blank receipts, certificates, or circulars, or any written or printed, or partly written and partly printed paper whatever, having on it an artificial or corporate name, or advertising that the business is the business of a bank, savings bank, or trust company, must have the proper capital stock paid in and set aside for the purpose of transacting that business, and must have received from the department, as provided for in this act, a certificate to do a banking business. A person, firm, company, copartnership, or corporation, domestic or foreign, violating any provision of this section shall forfeit to the state one hundred dollars (\$100) a day for every day or part of a day during which the violation continues. Upon action brought by the department, the court may issue an injunction restraining a person, firm, company, copartnership, or corporation from further violating any provision of this section, and may enter a further order or decree as equity and justice require. A person, firm, company, copartnership, or corporation doing any of the things or transacting any of the business defined in this section, must transact that business according to the provisions of the Bank Act, and the department may examine the accounts, books,



papers, cash, and credits of that person, firm, company, copartnership, or corporation, domestic or foreign, in order to ascertain whether that person, firm, company, copartnership, or corporation has violated or is violating any provisions of this section.

**History:** En. Sec. 30, Ch. 89, L. 1927; amd. Sec. 15, Ch. 431, L. 1975.

#### **Amendments**

The 1975 amendment substituted "de-

partment" for references to superintendent of banks throughout the section; and made numerous minor changes in phraseology, punctuation and style.

### **5-510. (6014.35) Foreign corporations.**

#### **Compiler's Notes**

Section 170, Ch. 431, Laws 1975, substituted "department" in this section for "superintendent of banks."

**5-517. (6014.42) Limit on amount of bond issue.** No commercial bank may purchase, agree to purchase, or underwrite any bond issue in excess of 10% of its assets, except bonds of the United States, of the state of Montana, or of the cities, towns, counties, or school districts of this state.

**History:** En. Sec. 38, Ch. 89, L. 1927; amd. Sec. 7, Ch. 71, L. 1977.

#### **Amendments**

The 1977 amendment substituted "may purchase" for "shall purchase" near the beginning of the section; and made minor changes in phraseology and style.

**5-518. (6014.43) Disposition of acquired stock.** No commercial or savings banks shall purchase or invest its capital or surplus, or money of its depositors, or any part of either, in the capital stock of any corporation, unless the purchase or acquisition of such capital stock shall be necessary to prevent loss to the bank on a debt previously contracted in good faith. Any capital stock so purchased or acquired shall be sold by such bank within six months thereafter, if it can be sold for the amount of the claim of such bank against it; and all capital stock thus purchased or acquired must be sold for the best price obtainable by said bank within one year after such purchase or acquisition, or if such stock is unmarketable, it shall be charged off as an investment loss, which shall be equivalent to sale thereof. Every person or corporation violating any provision of this section shall forfeit to the state twice the nominal amount of such stock.

**History:** En. Sec. 39, Ch. 89, L. 1927; amd. Sec. 1, Ch. 115, L. 1973.

#### **Effective Date**

Section 2 of Ch. 115, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 5, 1973.

#### **Amendments**

The 1973 amendment added to the second sentence the final clause relating to unmarketable stock.

**5-519. (6014.44) Fraud by director, officer, or employee.** A director, officer, agent, or employee of a bank is guilty of a felony who:

(1) knowingly receives or possesses himself of any of its property, otherwise than in payment for a just demand, and with intent to defraud:

(a) omits to make or to cause or direct to be made a full and true entry of it in its books and account; or

(b) concurs in omitting to make any material entry thereof;

(2) knowingly concurs in making or publishing any written report, exhibit, or statement of its affairs or pecuniary condition containing any material statement which is false; or

(3) having the custody or control of its books, willfully refuses or neglects to make a proper entry in the books of that corporation as required by law, to exhibit them, or allow them to be inspected and extracts to be taken from them by the department.

**History:** En. Sec. 40, Ch. 89, L. 1927; amd. Sec. 16, Ch. 431, L. 1975; amd. Sec. 8, Ch. 71, L. 1977.

#### Amendments

The 1975 amendment substituted "department" for "superintendent of banks, his chief deputy, or any of his examiners" at the end of subsection (4); and made

minor changes in phraseology, punctuation and style.

The 1977 amendment redesignated former subsection (2) as subdivision (1)(b); redesignated former subsections (3) and (4) as subsections (2) and (3); and made minor changes in phraseology and punctuation.

**5-523. (6014.48) Limitations on loans—liabilities—what included therein—reduction when excessive.** (1) The total loans to a person, co-partnership, or corporation by a bank, including loans to a co-partnership and to the several members thereof, shall at no time exceed twenty per cent (20%) of the amount of the unimpaired capital and surplus of that bank. The discount of bills of exchange drawn in good faith against actual existing values, the discount of bankers, acceptances of other banks, the discount of commercial or business paper actually owned by the person negotiating it, and the obligations of the United States or general obligations of any state or of any political subdivision thereof, or obligation issued under authority of the Federal Farm Loan Act, may not be considered as money borrowed. The limitations imposed on total loans by this section do not apply to loans and investments secured by obligations of the United States having a value of one hundred per cent (100%) of the amount loaned or invested or to loans made on warehouse receipts and bills of lading, when the warehouse receipts and bills of lading cover nonperishable commodities of the marketable value of at least one hundred twenty per cent (120%) of the amount loaned on them. Loans or obligations are not subject under this section to any limitation based upon that unimpaired capital and surplus to the extent that they are secured or covered by guaranties, or by commitments or agreements to take over or to purchase them, made by a federal reserve bank or by the United States or a department, bureau, board, commission, or establishment of the United States, including a corporation wholly owned directly or indirectly by the United States.

(2) The combined liabilities of the several members of a firm, co-partnership, or unincorporated association to the loaning bank shall be included in the liabilities of the firm, copartnership, or unincorporated association. That portion of the liabilities of the firm, copartnership, or unincorporated association for which a member individually is legally responsible shall be included in the liabilities of the member in determining the limitations imposed by this section. In determining the limitation for loans to a limited partner of a limited partnership, those portions of the

liabilities of the limited partnership for which the limited partner is free from liability shall be excluded.

(3) When in the judgment of the department, the liabilities of a corporation or the combined liabilities of a corporation and one or more of its stockholders to a bank are excessive, it shall require the reduction to the limits and within the time as it prescribes.

**History:** En. Sec. 44, Ch. 89, L. 1927; amd. Sec. 1, Ch. 71, L. 1943; amd. Sec. 1, Ch. 6, L. 1969; amd. Sec. 1, Ch. 118, L. 1973; amd. Sec. 17, Ch. 431, L. 1975.

#### Amendments

The 1969 amendment inserted "to loans and investments secured by obligations of the United States having a value of one hundred per cent (100%) of the amount thereof or" in the second sentence of the first paragraph.

The 1973 amendment substituted "that portion of the liabilities of such firm, co-

partnership or unincorporated association for which a member thereof individually shall be legally responsible" in the first sentence of the second paragraph for "the liabilities of such firm, copartnership or unincorporated association"; added the second sentence to the second paragraph; and made a minor change in phraseology.

The 1975 amendment inserted the subsection designations; substituted references to the department for references to the superintendent of banks in subsection (3); and made minor changes in phraseology and punctuation.

**5-527. (6014.52) Interest not to exceed lawful rate—permissible charges on installment loans.** No bank or savings and loan association shall demand or receive for loans or discounts, a rate of interest exceeding that allowed by law, excepting that it shall be lawful for any bank to receive interest in advance according to the ordinary usages of banking institutions. On loans other than loans for purchase of real estate to be repaid in one or more deferred installments a bank or savings and loan association may charge not to exceed the following schedule: On so much of the principal balance as does not exceed three hundred dollars (\$300), eleven dollars (\$11) per one hundred dollars (\$100) per year; if the principal balance exceeds three hundred dollars (\$300), but is less than one thousand dollars (\$1,000), nine dollars (\$9) per one hundred dollars (\$100) per year on that portion over three hundred dollars (\$300); if the principal balance exceeds one thousand dollars (\$1,000), seven dollars (\$7) per one hundred dollars (\$100) per year on that portion over one thousand dollars (\$1,000). Such charges shall be computed on the principal balance on contracts payable in successive monthly payments substantially equal in amount from the date of the contract until the maturity of the final installment, notwithstanding that the total balance thereof is required to be paid in installments. A minimum charge of twenty dollars (\$20) may be made with respect to any installment loan made by a bank or savings and loan association. When an installment loan contract provides for payment other than in equal successive monthly installments the charge may be at a rate which will provide the same yield as is permitted monthly payment contracts having due regard for the schedule of payments in the contract.

**History:** En. Sec. 48, Ch. 89, L. 1927; amd. Sec. 1, Ch. 239, L. 1969; amd. Sec. 1, Ch. 196, L. 1975.

#### Amendments

The 1969 amendment added provisions

relating to permissible charges on installment loans.

The 1975 amendments inserted "or savings and loan association" after "bank" in three places; and inserted "other than



loans for purchase of real estate" after "loans" in the second sentence.

#### Change of Interest Rate

Promissory note, payable in installments, bearing 6.5% add-on interest (i.e.,

real interest rate of 11.75%), was not illegal. However, when bank, after default of borrower, changed to a straight 11.75% annual interest rate, the note became usurious. *Montana Nat. Bank of Bozeman v. Kolokotronis*, — M —, 535 P 2d 1017.

**5-530. (6014.55) Deposit by minor.** Whenever any deposit shall be made in any bank by or in the name of any minor, the same shall be held for the exclusive right and benefit of such minor and free from the control or lien of all persons whatsoever, except creditors, and shall be paid, with any interest due thereon, to the person in whose name the deposit was made, and the receipt of such minor is a sufficient release or discharge for such deposit to the bank.

**History:** En. Sec. 51, Ch. 89, L. 1927; amd. Sec. 9, Ch. 71, L. 1977.

#### Amendments

The 1977 amendment substituted "was made" for "shall have been made" near the end of the section; and made minor changes in phraseology and punctuation.

**5-532. (6014.57) Reserve requirements.** A bank, except a reserve bank, shall maintain at all times a reserve of that percentage of its deposit liabilities as shall be determined by the department as provided in this section, of which reserve a portion the board of directors may determine may be on deposit in banks approved by the department as reserve banks. The department may establish, raise, or lower reserves which shall be maintained on demand deposits and on time deposits as in its judgment banking conditions may justify. The power to establish, raise, or lower reserves is limited to a percentage of deposits not in excess of reserve requirements which may be established for banks that are members of the federal reserve system and not less than seventy-five per cent (75%) of those reserve requirements for members of the federal reserve system. A bank approved by the department as a reserve bank must at all times maintain a reserve of the percentage or percentages as the department shall determine from time to time, which shall not be less than the percentages specified in this section of its deposit liabilities, of which a portion the board of directors may determine may be on deposit in banks approved by the department as reserve banks. A solvent bank of good repute having a full paid-up capital and surplus of three hundred thousand dollars (\$300,000), doing business in this state or any other state, may be designated by the department as a reserve agent for Montana banking institutions. The approval or designation may be withdrawn or withheld at any time by the department for cause. When the reserve of a bank falls below the amount required by this section, the bank may not increase its loans or discounts otherwise than by discounting or purchasing bills of exchange payable at sight or on demand, and the department shall notify a bank whose reserve may be below the amount required, to make good the reserve. In arriving at deposit liabilities with regard to bank deposits, the net balance of amounts due to and from other banks shall be taken as the basis for ascertaining the deposit liability to banks against which reserves shall be carried. However, a compliance

with the federal reserve banking laws, rules and regulations by member banks shall be held to be a compliance with the reserve requirements and conditions of this act, and entitles those federal reserve member banks to the rights and privileges accruing from compliance with this act.

**History:** En. Sec. 53, Ch. 89, L. 1927; amd. Sec. 1, Ch. 6, L. 1967; amd. Sec. 18, Ch. 431, L. 1975.

#### Amendments

The 1975 amendment substituted "department" for "superintendent of banks"

throughout the section; added "and entitles those federal reserve member banks to the rights and privileges accruing from compliance with this act" to the end of the last sentence and made minor changes in phraseology, punctuation and style.

**5-533. (6014.58) Borrowed money.** A bank may not at any time become indebted either directly or indirectly for borrowed money or re-discounts in an amount in excess of its paid-up capital and surplus, without first obtaining written authority from the department. Debentures or certificates of indebtedness issued by an investment company to run for a period of three (3) years or more, may not be included in the deposit liabilities of that investment company, as affected by the provisions of this section.

**History:** En. Sec. 54, Ch. 89, L. 1927; amd. Sec. 19, Ch. 431, L. 1975.

#### Amendments

The 1975 amendment substituted "department" for "superintendent of banks" at the end of the first sentence; deleted from the end of the second sentence "and

entitle such federal reserve member banks to the rights and privileges accruing from a compliance with this act"; and made minor changes in phraseology and style.

#### Cross-References

Limitations on borrowing money, sec. 5-1037.

## CHAPTER 6—STATE ADMINISTRATION OF BANKING

### Section

- 5-604. Director and employees not to be interested in banks.
- 5-607. [Transferred.]
- 5-609. State banking board—secretary—meetings—per diem.
- 5-610. Powers and duties of board.
- 5-611. Rules adopted by board—new banks.
- 5-612. Hearings—notice—intervenor.
- 5-613. Prehearing discovery.
- 5-614. Disqualification of board member.

**5-601 to 5-603. (6014.59 to 6014.61) Repealed.**

#### Repeal

Sections 5-601 to 5-603 (Secs. 55 to 57, Ch. 89, L. 1927; Secs. 13, 45, Ch. 177, L. 1965), relating to the state banking de-

partment and the state superintendent of banks, were repealed by Sec. 176, Ch. 431, Laws 1975.

**5-604. (6014.62) Director and employees not to be interested in banks.** Neither the director of the department of business regulation nor any bank examiner may be interested in or a borrower from any state bank, directly or indirectly.

**History:** En. Sec. 58, Ch. 89, L. 1927; amd. Sec. 20, Ch. 431, L. 1975; amd. Sec. 10, Ch. 71, L. 1977.

#### Amendments

The 1975 amendment substituted "direc-

tor of business regulation" for "superintendent of banks"; and made a minor change in phraseology.

The 1977 amendment inserted "the department of" near the beginning of the section.

**5-606. (6014.64) Repealed.****Repeal**

Section 5-606 (Sec. 60, Ch. 89, L. 1927), relating to payment of expenses of the

superintendent of banks, was repealed by Sec. 176, Ch. 431, Laws 1975.

**5-607. [Transferred.]****Compiler's Notes**

Section 21, Ch. 431, Laws of 1975 re-numbered this section as sec. 82A-407.

**5-608. Repealed.****Repeal**

Section 5-608 (Sec. 2, Ch. 420, L. 1973), relating to banking board members' ap-

pointment, terms, and vacancies in office, was repealed by Sec. 176, Ch. 431, Laws 1975.

**5-609. State banking board—secretary—meetings—per diem.** (1) The state banking board, created in 82A-407, shall elect a secretary from its members to serve at the pleasure of the board.

(2) In performing its functions, the board shall have use of the offices, equipment, and personnel of the department as it requires.

(3) The board shall hold regular meetings each quarter at a fixed date and time at the office of the department. Special meetings may be called by the chairman at any time upon 3 days' notice to the members.

(4) A quorum for all meetings shall be a majority of the board members, and a majority of the quorum present at any meeting may take action.

(5) The chairman shall have a voice but no vote in all meetings except to break a tie.

(6) Any board member except the chairman may be removed by the governor without cause in any case.

(7) The board members, except the chairman shall be paid \$25 a day or any part thereof devoted to the performance of their duties and travel expenses, as provided for in 59-538, 59-539, and 59-801, as amended, incurred in the performance of their duties. The costs and expenses of the board shall be legitimate charges of the department.

**History:** En. Sec. 3, Ch. 420, L. 1973; amd. Sec. 11, Ch. 71, L. 1977; amd. Sec. 2, Ch. 453, L. 1977.

(3), and (7); and made minor changes in phraseology, punctuation and style.

Chapter 453, Laws of 1977, inserted the subsection designations; substituted "state banking board created in 82A-407" near the beginning of subsection (1) for "board"; deleted "of business regulation" after "department" at the end of the first sentence of subsection (3) and at the end of the second sentence in subsection (7); substituted "travel expenses, as provided for in 59-538, 59-539, and 59-801, as amended, incurred in the performance of their duties" at the end of the first sentence of subsection (7) for "actual and reasonable expenses incurred in the performance of their duties and mileage as provided by law to state officers"; and made minor changes in phraseology, punctuation and style.

**Compiler's Notes**

This section was amended twice in 1977, once by Ch. 71 and once by Ch. 453. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

**Amendments**

Chapter 71, Laws of 1977, inserted the subsection designations; substituted "state banking board, established by 82A-407" near the beginning of subsection (1) for "board"; deleted "of business regulation" after "department" in subsections (2),



**5-610. Powers and duties of board.** The state banking board shall:

(1) make final determinations upon applications for certificates of authorization for new banks, mergers, consolidations, and relocations of banks;

(2) act in an advisory capacity with respect to the duties and powers given by statute or otherwise to the director of the department of business regulation as the duties and powers relate to banking.

**History:** En. Sec. 4, Ch. 420, L. 1973; amd. Sec. 22, Ch. 431, L. 1975; amd. Sec. 12, Ch. 71, L. 1977.

**Amendments**

The 1975 amendment substituted the present preliminary clause for one reading "The state banking board shall have the following powers in addition to any others

that hereafter may be granted to it by law"; substituted "certificates of authorization" for "charters" in subdivision (1); and made minor changes in phraseology.

The 1977 amendment inserted "of the department" before "of business regulation" in subsection (2); and made a minor change in phraseology.

**5-611. Rules adopted by board—new banks.** The board shall adopt rules necessary for the administration of 5-609 through 5-614 in accordance with the Montana Administrative Procedure Act. In particular, the board shall adopt rules concerning the authorization of new banks. Such rules shall contain minimum standards under which an application for a new bank shall be determined, including the following:

(1) a persuasive showing that there is a reasonable public necessity and demand for a new bank at the proposed location;

(2) that the bank will be owned and managed by persons of good moral character and financial integrity and will be safely and soundly operated;

(3) a persuasive showing that the new bank will have a sufficient volume of business to assure solvency and that establishment of the new bank will be in the public interest.

**History:** En. Sec. 5, Ch. 420, L. 1973; amd. Sec. 23, Ch. 431, L. 1975; amd. Sec. 13, Ch. 71, L. 1977.

**Amendments**

The 1975 amendment deleted a second sentence in the first paragraph directing the board to adopt rules as expeditiously as possible; substituted "shall adopt rules

concerning the authorization" for "give priority to promulgation of rules concerning the chartering" in the second paragraph; and made minor changes in phraseology.

The 1977 amendment substituted "5-609 through 5-614" for "this act" in the first sentence; and made minor changes in punctuation.

**5-612. Hearings—notice—intervenors.** (1) A hearing shall be conducted upon all applications for new bank certificates of authorization, in accordance with the Administrative Procedure Act [82-4201 to 82-4225] relating to a contested case, whether or not any protest to the application is filed.

(2) A notice of the filing of an application for a new bank certificate of authorization shall be mailed to all banks within one hundred (100) miles of the proposed location, measured in a straight line.

(3) A hearing shall be conducted no sooner than thirty (30) days and not later than ninety (90) days following the mailing of such notice.

(4) Any bank filing a written protest with the board prior to the date of the hearing shall be admitted as a "party," as defined in the Administrative Procedure Act, with full rights of a party, including the right of subpoena of witnesses and written materials, the right of cross-examination, the right to have a transcript, and the right to receive all notices, copy of the application, all orders, and the right of judicial review and appeal.

(5) All applications for mergers, consolidations or relocations of banks shall likewise require a hearing, and all of the rights and procedures stated herein shall apply to these matters.

**History:** En. Sec. 6, Ch. 420, L. 1973; amd. Sec. 24, Ch. 431, L. 1975.

ministrative Procedure Act [82-4201 to 82-4225]" from the beginning of subsection (1); substituted references to certificates of authorization for references to charters in subsections (1) and (2); and made minor changes in phraseology.

#### Amendments

The 1975 amendment divided the section into subsections; deleted "In addition to the requirements of the Montana Ad-

**5-613. Prehearing discovery.** The board shall permit prehearing discovery procedures, including the taking of depositions and the production of documents. In such discovery procedures, the rules of civil procedure for state courts shall furnish guidelines for these purposes. As soon as practicable, the board shall adopt rules regarding discovery procedures, but until this is accomplished, the foregoing shall apply.

In adopting rules for hearings, the board shall provide for the issuance of subpoenas and for the administration of oaths to witnesses and parties or their representatives, to apply both to discovery procedures and to hearings, and the board shall have authority to provide for issuance of subpoenas and administration of oaths.

**History:** En. Sec. 7, Ch. 420, L. 1973.

**5-614. Disqualification of board member.** Any board member shall disqualify himself from acting upon any matter in which he or any bank or financial institution in which he has a direct or indirect interest is involved competitively or otherwise.

**History:** En. Sec. 8, Ch. 420, L. 1973.

"The provisions of this act shall not apply to any application filed prior to January 1, 1973."

#### Separability Clause

Section 9 of Ch. 420, Laws 1973 read

### CHAPTER 7—BANK REPORTS AND SUPERVISION

#### Section

5-701. Report to department of business regulation.

5-702. Report of declaration of dividend.

5-703. Special reports to department.

5-705. Reports confidential—false reports—penalties.

5-707. False statements and entries considered felony.

**5-701. (6014.65) Report to department of business regulation.** A bank shall make to the department of business regulation regular call reports according to the form which may be prescribed by the department, verified by oath or affirmation of the president, vice-president or cashier

of the bank and attested by the signature of at least two (2) of the directors other than the subscribing officer. Each report shall exhibit in detail, and under appropriate schedules, the resources and liabilities of the bank at the close of business on any past day specified by the department. The report shall be transmitted to the department within five (5) days after the receipt of a request or requisition for it, and in a form the department may require. It shall be published as soon as possible in a newspaper published in the place where the bank is established, or, if there be no newspaper in the place, then in one published nearest to that place in the same county, at the expense of the bank. Proof of the publication shall be furnished at the times and in the manner as may be required by the department.

**History:** En. Sec. 61, Ch. 89, L. 1927; amd. Sec. 25, Ch. 431, L. 1975.

**Amendments**

The 1975 amendment substituted refer-

ences to department of business regulation for "superintendent of banks" throughout the section; and made minor changes in phraseology, punctuation and style.

**5-702. (6014.66) Report of declaration of dividend.** In addition to the report required by 5-701, a bank shall report to the department within 10 days after declaring any dividend, showing the amount of the dividend and the amount of net earnings in excess of the dividend. The report shall be attested as provided in 5-701.

**History:** En. Sec. 62, Ch. 89, L. 1927; amd. Sec. 26, Ch. 431, L. 1975; amd. Sec. 14, Ch. 71, L. 1977.

**Amendments**

The 1975 amendment substituted "de-

partment" for "superintendent of banks"; and made minor changes in phraseology.

The 1977 amendment substituted "report" for "statement" near the beginning of the first and second sentences; and made minor changes in style.

**5-703. (6014.67) Special reports to department.** In addition to the information obtained from the report required by section 5-701, the department may also require a bank to furnish a special report in writing, verified as required by section 5-701, when in its judgment the special report is necessary to inform it fully of the actual financial condition and affairs of the bank. A willfully false statement in the report is perjury, and shall be punished accordingly.

**History:** En. Sec. 63, Ch. 89, L. 1927; amd. Sec. 27, Ch. 431, L. 1975.

**Amendments**

The 1975 amendment substituted "department" for "superintendent of banks" and made minor changes in phraseology.

**5-704. (6014.68) Superintendent to call for reports.**

**Compiler's Notes**

Section 170, Ch. 431, Laws 1975, substi-

tuted "department" in this section for "superintendent of banks."

**5-705. (6014.69) Reports confidential—false reports—penalties.** The report and any information contained in the reports and statements provided for, other than those reports which are required to be published, shall be considered secret and for the confidential information of the department only. The information may not be imparted to persons who are not officially associated with the department, and the information con-



tained in them shall be used by the department only in the furtherance of its official duties. The department may exchange information with federal banking departments and with departments of other states and furnish information to legislative auditor or prosecuting officials who request it for use in pursuit of official duties. An employee or agent of the department, who violates any of the provisions of this section, or willfully makes a false official report as to the condition of a bank, shall be removed from office, and is also guilty of a felony. Upon conviction, he shall be fined not exceeding one thousand dollars (\$1,000), or imprisoned in the state penitentiary not exceeding five (5) years, or both fined and imprisoned.

**History:** En. Sec. 65, Ch. 89, L. 1927; amd. Sec. 28, Ch. 431, L. 1975.

#### Amendments

The 1975 amendment substituted "department" for "superintendent of banks" throughout the section; inserted "legislative auditor or" before "prosecuting offi-

cial" in the third sentence; substituted "An employee or agent of the department" for "Any superintendent of banks or deputy, assistant, examiner, or clerk in his employ" at the beginning of the fourth sentence; and made minor changes in phraseology.

**5-707. (6014.67) False statements and entries considered felony.** Every officer or other person authorized by this act who willfully and knowingly makes any false statement of facts, statement of account, or report and every officer, agent, or clerk of any bank who willfully and knowingly makes any false entries in the books of such bank or knowingly subscribes or exhibits false papers with the intent to deceive any person authorized to examine such bank and every person authorized by the provisions of this act to make statements or reports who willfully and knowingly subscribes or makes any false statement or report is guilty of a felony and upon conviction thereof shall be imprisoned in the state prison for a term of not less than 1 or more than 10 years.

**History:** En. Sec. 67, Ch. 89, L. 1927; amd. Sec. 15, Ch. 71, L. 1977.

#### Amendments

The 1977 amendment substituted "is guilty of a felony" for "shall be deemed

guilty of a felony" near the end of the section; deleted "at hard labor" after "shall be imprisoned" near the end of the section; and made minor changes in phraseology, punctuation and style.

## CHAPTER 8—IMPAIRMENT OF CAPITAL—INSOLVENCY

### Section

**5-801.** Assessment on capital stock to make good impairment.

**5-802.** Penalty for receiving deposits when insolvent or for making false statements.

**5-801. (6014.72) Assessment on capital stock to make good impairment.** (1) When the department of business regulation determines that an impairment of capital exists in a bank, it may, in its discretion, notify the board of directors of the bank by written notice that the impairment exists, stating the amount thereof in dollars and percentage of the capital stock, and it may, in its discretion, order the board to make good the impairment within ninety (90) days from date of the notice.

(2) The board of directors shall, upon receipt of notice, convene and pass a resolution reciting the receipt of the notice of impairment and

calling a special meeting of the stockholders of the bank in the manner provided in their bylaws.

(3) The stockholders at the meeting shall pass a resolution reciting the facts of receipt of notice from the department, notice of impairment and notice of meeting, and assessing themselves by assessing the stock of record, payment of which assessment must be made within the time limit specified by the department as provided in notice of impairment.

(4) If there is any stock remaining on which the assessment is not paid as provided in this section, it or a part of it as is necessary to pay the assessment shall be sold by the board of directors, acting through the cashier or secretary of the bank, at public or private sale, as appears best for all concerned, not less than thirty (30) days after the day fixed for payment of assessment. Notice of the time and place of the sale shall be given by registered mail to the stockholders by the board through its cashier or secretary at least ten (10) days prior to the sale. A sale of stock as provided in this section causes an absolute cancellation of the outstanding certificate or certificates evidencing the stock so sold, and makes them void in the hands of the stockholder, his assigns or pledgees. A new certificate shall be issued by the bank to the purchaser for the number of shares purchased, and a new certificate issued to the stockholder of record and delivered to him or any pledgee or assignee of the stock for the remaining shares, if any. The record of the original certificate sold shall be marked canceled on the books of the bank and that record is prima facie evidence of the regularity of the proceedings for the sale of the stock.

(5) If a bank fails to make good its capital impairment upon demand of the department, as provided in this section, the department may immediately take charge of that bank and proceed to liquidate it as in case of insolvency.

(6) If the stock does not sell for enough to pay the assessment on it, the board of directors may sue in the name of the corporation to collect the deficiency from the record holder whose stock has been sold for the assessment.

**History:** En. Sec. 68, Ch. 89, L. 1927; amd. Sec. 29, Ch. 431, L. 1975.

#### **Amendments**

The 1975 amendment inserted subsection designations (1) and (6); redesignated

former subdivisions 1 through 4 as subsections (2) through (5); substituted references to department of business regulation for references to superintendent of banks; and made numerous minor changes in phraseology.

**5-802. (6014.73) Penalty for receiving deposits when insolvent or for making false statements.** Any officer, agent, or clerk of any bank, knowing such bank to be insolvent, who receives money, bank bills, notes of the United States, or currency or other bills or drafts circulating as money or currency, except in the manner set forth in the succeeding section; subscribes or makes any false statements or entries in the books of such bank; knowingly subscribes or exhibits any false paper with the intent to deceive any person authorized to examine as to the condition of such bank; or willfully subscribes or makes false reports is subject to imprisonment in the state prison for a term not exceeding 5 years.

**History:** En. Sec. 69, Ch. 89, L. 1927; amd. Sec. 16, Ch. 71, L. 1977.

**Amendments**

The 1977 amendment deleted "at hard

labor" after "subject to imprisonment" near the end of the section; and made minor changes in phraseology, punctuation and style.

**5-803. (6014.74) Deposits in insolvent bank.**

**Compiler's Notes**

Section 170, Ch. 431, Laws 1975 substi-

tuted "department" in this section for "superintendent of banks."

**CHAPTER 9—EXAMINATION AND SUPERVISION—  
STATE EXAMINER'S FUND**

**Section**

5-901. Examination and supervision.

5-908. Payments by banks, investment and trust companies.

5-910. Special examinations and fees.

**5-901. (6014.75) Examination and supervision.** The department of business regulation shall exercise constant supervision over the books and affairs of all banks doing business in this state. It shall examine, at least once a year, each of those banks and verify the assets and liabilities of each, and so far investigate the character and value of the assets of each as to ascertain with reasonable certainty that the values are correctly carried on the books. It shall further investigate the methods of operation and conduct of business of the banks and their systems of accounting, to ascertain whether the methods and systems are in accordance with law and sound banking principles. It may examine under oath, any of the officers, directors, agents, clerks, customers, or depositors of a bank regarding the affairs and business thereof. It may, in the performance of its official duties, issue subpoenas and administer oaths. In case of a refusal to obey a subpoena issued by it, the refusal may at once be reported to the district court of the district in which the bank is located, and the court shall enforce obedience to the subpoena in the manner provided by law for enforcing obedience to the process of the court. In all matters relating to its official duties, the department has the same power possessed by courts of law to issue subpoenas, and have them served and enforced. All officers, directors, agents and employees of banks doing business under this act, and all persons having dealings with or knowledge of the affairs or methods of a bank, shall at all times afford reasonable facilities for the examinations, and make returns and reports to the department as it may require. They shall also attend hearings and answer under oath the department's inquiries, produce and exhibit any books, accounts, documents and property it desires to inspect, and in all things aid it in the performance of its duty.

**History:** En. Sec. 71, Ch. 89, L. 1927; amd. Sec. 30, Ch. 431, L. 1975.

**Amendments**

The 1975 amendment substituted refer-

ences to department of business regulation for references to superintendent of banks throughout the section; and made minor changes in phraseology and punctuation.



**5-902. (6014.76) Repealed.****Repeal**

Section 5-902 (Sec. 72, Ch. 89, L. 1927; Sec. 7, Ch. 93, L. 1969), relating to reports

and records of the superintendent of banks, was repealed by Sec. 176, Ch. 431, Laws 1975.

**5-903 to 5-907. (6014.77 to 6014.81) Repealed.****Repeal**

Sections 5-903 to 5-907 (Sec. 73, Ch. 89, L. 1927; Sec. 1, Ch. 167, L. 1929; Sec. 1, Ch. 195, L. 1945; Sec. 1, Ch. 48, L. 1953; Sec. 1, Ch. 49, L. 1953; Sec. 1, Ch. 50, L. 1953; Sec. 1, Ch. 138, L. 1959; Sec. 1, Ch.

139, L. 1959; Sec. 1, Ch. 159, L. 1959; Sec. 1, Ch. 186, L. 1959), relating to payments by local governments into the state treasury, were repealed by Sec. 6, Ch. 256, Laws 1971.

**5-908. (6014.82) Payments by banks, investment and trust companies.**

For the credit of the general fund of the state, each bank, trust company or investment company, under the supervision of the department, shall pay to the state treasurer, on or before the last of June of each year, a supervision fee of four hundred dollars (\$400). An examination fee of ten cents (10¢) for each one thousand dollars (\$1000) of total assets as of the date of the examination shall be paid at the conclusion of the examination.

**History:** En. Sec. 73, Ch. 89, L. 1927; amd. Sec. 1, Ch. 167, L. 1929; amd. Sec. 1, Ch. 59, L. 1953; amd. Sec. 1, Ch. 141, L. 1959; amd. Sec. 1, Ch. 256, L. 1971; amd. Sec. 170, Ch. 431, L. 1975.

**Amendments**

The 1971 amendment completely rewrote this section. For prior text, see parent volume.

The 1975 amendment substituted "department" in the first sentence for "superintendent of banks."

**5-909. (6014.83) Payments by building and loan associations.****Compiler's Notes**

Section 170, Ch. 431, Laws 1975, substi-

tuted "department" in this section for "superintendent of banks."

**5-910. (6014.84) Special examinations and fees.** Special examinations may be made of a bank, trust company, investment company, building and loan association, or credit union when in the judgment of the department it is considered necessary, and the special examination shall be charged for at the rate of one hundred dollars (\$100) a day for each person engaged in the examination. All special examination fees or charges shall be paid at the conclusion of the examination and the moneys collected by the department shall be paid to the state treasurer, for the credit of the general fund.

**History:** En. Sec. 2, Ch. 167, L. 1929; amd. Sec. 1, Ch. 58, L. 1953; amd. Sec. 1, Ch. 137, L. 1955; amd. Sec. 1, Ch. 180, L. 1959; amd. Sec. 222, Ch. 147, L. 1963; amd. Sec. 22, Ch. 249, L. 1967; amd. Sec. 5, Ch. 256, L. 1971; amd. Sec. 31, Ch. 431, L. 1975.

The 1975 amendment substituted "department" for "superintendent of banks" in the first sentence, and for "state examiner and ex officio superintendent of banks" in the second sentence; and made minor changes in phraseology.

**Amendments**

The 1971 amendment completely rewrote this section. For prior text, see parent volume.

**Repealing Clause**

Section 6 of Ch. 256, Laws 1971 read "Sections 5-903, 5-904, 5-905, 5-906, 5-907, R.C.M. 1947, are repealed."

## CHAPTER 10—GENERAL POWERS AND LIMITATIONS OF BANKS

## Section

- 5-1002. Change from state to national bank.
- 5-1002.1. National bank powers extended to state banks—department consent—regulations.
- 5-1012. Information obtained by department confidential—penalty for the violation thereof.
- 5-1018. Department to make rules.
- 5-1019. Special examination defined.
- 5-1021. Consolidation or merger of banks.
- 5-1024. Conversion of surplus and undivided profits to capital.
- 5-1027. Department may make rules.
- 5-1028. Branch bank prohibited—exceptions.
- 5-1032. Bonding of employees.
- 5-1037. Borrowing money—limitations.
- 5-1039. Giving security for deposit prohibited—exceptions.
- 5-1040. Penalty for unlawful hypothecation of property received.
- 5-1044. Theft of bank funds by officers or employees.
- 5-1055. Closing on Saturdays authorized—Saturday treated as holiday.
- 5-1058. Definitions.
- 5-1059. Power of department.
- 5-1060. Powers of officers.
- 5-1061. Notice to department.
- 5-1062. Effect of closing.

**5-1002. (6014.86) Change from state to national bank.** Any bank may become a corporation for the purpose of carrying on the business of banking in this state, under the act of congress “to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof”, approved June 3, 1864, and under Title 52 of the Revised Statutes of the United States, when stockholders owning two-thirds of the stock of the bank have voted to become such corporation or have executed a written consent authorizing its directors to make the certificate required therefor by the laws of the United States or when a majority of the directors of the bank, having been authorized in their discretion to make the change, shall, by a vote of the majority, decide to become such corporation. The cashier of the bank shall publish notice thereof for 30 days in the newspaper which the directors select and send a like printed notice by mail or otherwise to all nonvoting or dissenting stockholders and notify the department of business regulation that the bank has decided to become a corporation under the laws of the United States.

**History:** En. Sec. 75, Ch. 89, L. 1927; amd. Sec. 32, Ch. 431, L. 1975; amd. Sec. 17, Ch. 71, L. 1977.

last sentence; and made minor changes in phraseology.

The 1977 amendment substituted “under Title 52” for “of Title 52” in the middle of the first sentence; and made minor changes in phraseology, punctuation and style.

**Amendments**

The 1975 amendment substituted “department of business regulation” for “state bank examiner of this state” in the

**5-1002.1. National bank powers extended to state banks—department consent—regulations.** With the consent of the department of business regulation, every bank organized under the laws of the state shall have power to and may engage in any activity or business in which such bank could engage if it were operating as a national bank. The department of business regulation may prescribe, amend and repeal regulations affecting

and controlling the exercise of the powers granted by this act, provided that such regulations and powers shall not apply to activities which are expressly prohibited or limited by the statutes of the state.

**History:** En. Sec. 1, Ch. 119, L. 1973.

**Title of Act**

An act granting to state banks the

power to engage in any business or activity permitted to national banks with the consent of the department of business regulation.

**5-1006. (6014.90) Reorganization of national bank as state bank.**

**Compiler's Notes**

Section 170, Ch. 431, Laws 1975, substituted "department" in this section for

"superintendent of banks," and "state superintendent of banks."

**5-1009 to 5-1011. (6014.93 to 6014.95) Repealed.**

**Repeal**

Sections 5-1009 to 5-1011 (Secs. 82 to 84, Ch. 89, L. 1927), relating to the name and financial condition required of unincorpo-

rated banks, and examination of private banks by the state examiner, were repealed by Sec. 176, Ch. 431, Laws 1975.

**5-1012. (6014.96) Information obtained by department confidential—penalty for the violation thereof.** Any knowledge or information gained or discovered by the department in pursuance of its powers or duties is confidential information of the department. The information may not, except as provided in this section, be imparted to any person not officially associated with the department. The information shall be used by the department only in the furtherance of its official duties, except that the department may exchange information with federal banking department and departments of other states and may furnish information to prosecuting officials who require it for use in pursuit of official duties. An employee or agent of the department who violates this section, or willfully makes a false official report as to the condition of a bank, shall be removed from office, and is also guilty of a felony. Upon conviction he shall be fined not exceeding one thousand dollars (\$1,000), or imprisoned in the state penitentiary not exceeding five (5) years, or both fined and imprisoned.

**History:** En. Sec. 85, Ch. 89, L. 1927; amd. Sec. 33, Ch. 431, L. 1975.

charter. *Miners & Merchants Bank v. Dowdall*, 158 M 142, 489 P 2d 1274.

**Amendments**

The 1975 amendment substituted "department" for "superintendent of banks" and "state examiner" throughout the section; substituted "An employee or agent of the department" for "Any state examiner or deputy, assistant, or clerk in his employ" at the beginning of the fourth sentence; and made minor changes in phraseology.

**Purpose of Section**

The purpose of this section is to ensure the securing of necessary and pertinent information by the superintendent of banks in discharge of his official duties and such purpose is reasonable. *Miners & Merchants Bank v. Dowdall*, 158 M 142, 489 P 2d 1274.

**Scope and Nature of Information**

This section requires confidentiality of information secured in determination of bank charter applications and does not confine it to information required in the supervision, audit and examination of existing banks. *Miners & Merchants Bank v. Dowdall*, 158 M 142, 489 P 2d 1274.

**Duty Not to Reveal Information**

The state superintendent of banks is not required to reveal confidential information received during the course of his investigation of an application for a bank



**5-1013. (6014.97) Repealed.**

**Repeal** relating to reports of private banks, was  
 Section 5-1013 (Sec. 86, Ch. 89, L. 1927), repealed by Sec. 176, Ch. 431, Laws 1975.

**5-1014. (6014.98) Receiving deposits by insolvent bank, etc.**

**Compiler's Notes** substituted "department" in this section for  
 Section 170, Ch. 431, Laws 1975, substituted "superintendent of banks."

**5-1018. (6014.102) Department to make rules.** The department may adopt uniform rules to govern the examination and reports of banks and prescribe the form in which banks shall report their assets, liabilities, and reserves.

**History:** En. Sec. 91, Ch. 89, L. 1927; partment" for "superintendent of banks";  
 amd. Sec. 34, Ch. 431, L. 1975. deleted "and regulations" after "uniform  
 rules"; and made minor changes in phrase-  
 ology.

**Amendments**

The 1975 amendment substituted "de-

**5-1019. (6014.103) Special examination defined.** A special examination is an examination made by the department otherwise than in the ordinary routine of the department because, in its opinion, the condition of the bank requires the examination or an examination made at the request of the board of directors or stockholders of a bank.

**History:** En. Sec. 92, Ch. 89, L. 1927; partment" for "superintendent of banks";  
 amd. Sec. 35, Ch. 431, L. 1975; amd. Sec. 18, Ch. 71, L. 1977. and made minor changes in phraseology.  
 The 1977 amendment made minor  
 changes in phraseology and punctuation.

**Amendments**

The 1975 amendment substituted "de-

**5-1020. (6014.105) Examination at request of directors.**

**Compiler's Notes** substituted "department" in this section for  
 Section 170, Ch. 431, Laws 1975, substituted "superintendent of banks."

**5-1021. (6014.105) Consolidation or merger of banks.** (1) The words "bank" or "banks" as used in this section include commercial banks, savings banks, trust companies, investment companies, and other such corporations carrying on the business of banking, trust company, or investment company under the laws of this state or doing business in this state under the national banking laws of the United States.

(2) Any two or more banks doing business in this state may, with the approval of the state banking board in the case of state banks, consolidate or merge into one bank, on such terms and conditions as may be lawfully agreed upon by a majority of the board of directors of each bank proposing to consolidate or merge. Such consolidation or merger, before it becomes effective, must be ratified by the consent in writing of the shareholders of each such bank owning at least two-thirds of its capital stock outstanding, provided that the capital stock of such consolidated or merged bank may not be less than that required under existing law for the organization of a bank of the class of the largest of the banks so consolidating.

(3) Upon such consolidation or merger, the corporate franchise, corporate life, being, and existence, and the corporate rights, powers, duties, privileges, franchises, and obligations, including the rights, powers, duties, privileges, and obligations as trustee, executor, administrator, guardian, and all and every right, power, duty, privilege, and obligation as fiduciary, together with title to every species of property, real, personal, and mixed, of such consolidating or merging bank and banks shall, without the necessity of any instrument of transfer, become consolidated or merged and continued in and held, enjoyed, and assumed by the consolidated or merged bank, and such bank shall have and enjoy the right equal as to priorities with any other applicant to appointment by the courts to the offices of executor, administrator, guardian, or trustee under any will or other instrument made prior to such consolidation or merger and by which will or instrument such consolidating or merging bank was nominated by the maker to such office.

**History:** En. Sec. 94, Ch. 89, L. 1927; amd. Sec. 1, Ch. 108, L. 1931; amd. Sec. 171, Ch. 431, L. 1975; amd. Sec. 19, Ch. 71, L. 1977.

#### Amendments

The 1975 amendment substituted "state banking board" for "superintendent of banks."

The 1977 amendment inserted the subsection designations; deleted "under, into and with the charter of either existing bank hereinafter referred to as the consolidated bank" after "merge into one bank" near the beginning of subsection (2); inserted references to merge after references to consolidate throughout the section; and made minor changes in phraseology and punctuation.

**5-1024. (6014.108) Conversion of surplus and undivided profits to capital.** A bank having a surplus and undivided profits equal to or in excess of fifty per cent (50%) of its capital stock, may increase its capital stock by the issuance of new stock for a part of that surplus and undivided profits. The increase may be made by the vote of two-thirds ( $\frac{2}{3}$ ) of the stock in person or by proxy, either at a regular annual stockholders' meeting or at a meeting called for that purpose in accordance with the bylaws of the corporation. All increases of capital stock made under this section must be accomplished in a manner conforming to the requirements of this act pertaining to surplus of banks when first incorporated. New capital stock when issued by a bank against its surplus and undivided profits may be issued without the payment of cash for it, but it shall be charged upon the books of the bank and in the statements of the bank against surplus and undivided profits so that the combined capital, surplus and undivided profits are not reduced by the issuance of the new stock. When a bank has voted to issue any stock as contemplated in this section, it shall certify that action to the department, which shall within thirty (30) days approve or reject the plan. Its action shall be final and written notice of it shall be given to the bank. If the department approves of the issuance of the new stock and so notifies the bank, the bank shall then file a certificate of issuance with the county clerk and recorder of the county in which the bank is located and with the secretary of state. Upon the filing with the secretary of state, the increase becomes effective.

**History:** En. Sec. 97, Ch. 89, L. 1927; amd. Sec. 36, Ch. 431, L. 1975.

**Amendments**

The 1975 amendment substituted "department" for "superintendent of banks" throughout the section and made minor changes in phraseology.

**5-1025. (6014.110) Superintendent to examine trusts.****Compiler's Notes**

Section 170, Ch. 431, Laws 1975, substituted "department" in this section for "state superintendent of banks."

**5-1026. (6014.110) Extent assets may be pledged.****Compiler's Notes**

Section 170, Ch. 431, Laws 1975, substituted "department" in this section for "superintendent."

**5-1027. (6014.111) Department may make rules.** The department may promulgate reasonable rules and orders concerning bookkeeping and accounting by state banks, including the keeping of reasonable credit information, information in connection with assets, or information in connection with charged-off items.

**History:** En. Sec. 100, Ch. 89, L. 1927; amd. Sec. 170, Ch. 431, L. 1975; amd. Sec. 20, Ch. 71, L. 1977.

**Amendments**

The 1975 amendment substituted "department" for "superintendent of banks."

The 1977 amendment substituted "may promulgate reasonable rules and orders concerning" for "shall have the authority to make and promulgate reasonable rules and orders in the matter of"; and made minor changes in phraseology and punctuation.

**5-1028. (6014.112) Branch bank prohibited—exceptions.** (1) No bank may maintain any branch bank, receive deposits, or pay checks except over the counter of and in its own banking house. Provided, that nothing in this section prohibits ordinary clearinghouse transactions between banks.

(2) With the prior approval of the department, any bank doing business in this state may establish and maintain not more than one detached drive-in and walk-up facility consisting of one or more teller windows. The distance of the facility from the main banking house may not exceed 1,000 feet measured in a straight line from the closest point of the main banking house to the farthest point of the detached facility. The facility may not be closer than 200 feet to a facility operated by any other bank or closer than 300 feet to the main banking house of any other bank, the measurement to be made in a straight line from the closest points of the closest structures involved. The distances herein specified in relation to a facility operated by any other bank and in relation to the main banking house of any other bank may be decreased by mutual written agreement of the banks involved to not closer than 150 feet to a facility operated by any other bank or closer than 200 feet to the main banking house of any other bank, the measurement to be made in a straight line from the closest points of the closest structures involved. The service of the facility shall be limited to receiving deposits of every kind, cashing checks or orders to pay, receiving payments payable at the bank, and such other transactions as are normally and usually conducted or handled at teller windows in the main banking house.



(3) (a) Any bank authorized to do banking business in this state may utilize a satellite terminal as defined in the Montana Electronic Funds Transfer Act and at any location permitted by the Montana Electronic Funds Transfer Act. The use of satellite terminals hereby authorized shall not be subject to the restrictions on location, transaction, or number applicable to detached drive-in, walk-up, or teller facilities.

(b) A satellite terminal other than a point of sales terminal may not be closer than 200 feet to a facility operated by any other bank or closer than 300 feet to the main banking house of any other bank, the measurement to be made in a straight line between the closest points of the closest structures involved. The distances herein specified in relation to a facility operated by any other bank and in relation to the main banking house of any other bank may be decreased by mutual written agreement of the banks involved to not closer than 150 feet to a facility operated by any other bank or closer than 200 feet to the main banking house of any other bank, the measurement to be made in a straight line between the closest points of the closest structures involved.

**History:** En. Sec. 101, Ch. 89, L. 1927; amd. Sec. 1, Ch. 39, L. 1963; amd. Sec. 1, Ch. 80, L. 1965; amd. Sec. 170, Ch. 431, L. 1975; amd. Sec. 22, Ch. 503, L. 1977.

The 1977 amendment inserted subsection designations (1) and (2); added subsection (3); and made minor changes in phraseology and punctuation.

#### Amendments

The 1975 amendment substituted "department" for "superintendent of banks."

#### Cross-References

Electronic banking facilities, § 5-1701 et seq.

### 5-1029. (6014.113) Past due and doubtful paper.

#### Compiler's Notes

Section 170, Ch. 431, Laws of 1975 sub-

stituted "department" in this section for "superintendent of banks."

### 5-1030. (6014.114) Reserve—reports on.

#### Compiler's Notes

Section 170, Ch. 431, Laws 1975, substituted "department" in this section for

"superintendent," and "superintendent of banks."

**5-1032. (6014.116) Bonding of employees.** (1) The board of directors of every bank shall require that all officers and employees of banks whose duty includes the handling of moneys, notes, bonds, credits, and cash items and whose duties include bookkeeping or the making of entries in relation to the business of the bank and its customers be bonded.

(2) The board of directors shall by order entered upon the minute books of the board designate the officers and employees to be bonded and the amount of bonds to be given. Such action as to the personnel, the amount of bonds, and the surety company or sureties is subject to approval by the department and the bonds shall be in such form as is provided or approved by the department.

(3) The bonds shall be approved by the president of the bank and his action reported to the board of directors.

(4) All bonds required by this section shall be kept in the custody of the bank subject to inspection by examiners from the department; pro-

vided, as far as possible, they may not be placed in the custody of the officer or employee for whom the same is given.

**History:** En. Sec. 105, Ch. 89, L. 1927; amd. Sec. 3, Ch. 145, L. 1931; amd. Sec. 170, Ch. 431, L. 1975; amd. Sec. 21, Ch. 71, L. 1977.

#### **Amendments**

The 1975 amendment substituted "department" for references to the superintendent of banks.

The 1977 amendment inserted the subsection designations; inserted "of bonds" after "the amount" near the beginning of the second sentence of subsection (2); and made minor changes in phraseology and punctuation.

### **5-1036. (6014.130) Removal of directors, officers, or employees.**

#### **Compiler's Notes**

Section 170, Ch. 431, Laws 1975, sub-

stituted "department" in this section for "superintendent."

**5-1037. (6014.121) Borrowing money—limitations.** A bank may not borrow money, except to meet its seasonal requirements or unexpected withdrawals. At no time shall the bills payable and rediscounts of a bank be permitted to exceed in the aggregate an amount equal to the capital and surplus of the bank, except with the written consent of the department. When it appears to the department that a bank is borrowing money in excess of the limitation provided by this section, or for the purposes other than as specified in this section, the department may require it to reduce the borrowing within a time to be fixed by the department.

**History:** En. Sec. 110, Ch. 89, L. 1927; amd. Sec. 37, Ch. 431, L. 1975.

#### **Amendments**

The 1975 amendment substituted "department" for "superintendent"; and made minor changes in phraseology.

#### **Cross-References**

Indebtedness for borrowed money, limitations, sec. 5-533.

**5-1039. (6014.123) Giving security for deposit prohibited—exceptions.** It is unlawful for any bank to pledge, mortgage, or hypothecate to any depositor any of its real or personal property as security for any deposit, and any pledge, mortgage, or hypothecation made in violation thereof is unenforceable. This provision does not apply to any deposits of money of the United States, public funds deposited in accordance with the provisions of any depository act of this state or the United States, or bankruptcy estate funds or deposits, including deposits of receivers or trustees in bankruptcy, deposited under the direction and supervision of a court of record of the state of Montana or of the United States.

**History:** En. Sec. 112, Ch. 89, L. 1927; amd. Sec. 1, Ch. 33, L. 1941; amd. Sec. 22, Ch. 71, L. 1977.

#### **Amendments**

The 1977 amendment substituted "including" for "also" before "deposits of receivers or trustees" near the end of the second sentence; and made minor changes in phraseology and punctuation.

**5-1040. (6014.124) Penalty for unlawful hypothecation of property received.** Any officer or employee of any bank doing business in this state who, except in the manner authorized by law or the contract of the parties, hypothecates, pledges, or in any way alienates any notes, stocks,

bonds, mortgages, securities, or any other property coming into his hands or into the possession of the bank as collateral, for safekeeping or in any other manner, and to which the bank has not acquired full title, is guilty of theft and upon conviction thereof shall be punished as for other felonies.

**History:** En. Sec. 113, Ch. 89, L. 1927;  
amd. Sec. 42, Ch. 359, L. 1977.

#### Amendments

The 1977 amendment substituted "theft" near the end of the section for "embezzlement"; and made minor changes in phraseology and punctuation.

**5-1044. (6014.128) Theft of bank funds by officers or employees.** Any banker, officer, director, or employee of any bank who fraudulently appropriates or abstracts or misapplies any of the moneys, funds, credits, or property of the bank when owned by it or held in trust, or issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange, mortgage, judgment, or decree with intent in any case to injure or defraud the bank or any person or corporation or to deceive any officer of the bank or any other person or anyone appointed to examine the affairs of the bank or any person who with like intent, aids or abets any officer, clerk, or employee in the violation of this section is guilty of theft and upon conviction thereof shall be imprisoned in the state prison for a period of not exceeding 20 years.

**History:** En. Sec. 117, Ch. 89, L. 1927;  
amd. Sec. 43, Ch. 359, L. 1977.

#### Amendments

The 1977 amendment substituted "fraud-

ulently appropriates" near the beginning of the section for "embezzles"; substituted "theft" near the end of the section for "a felony"; and made minor changes in phraseology, punctuation and style.

**5-1046. (6014.130) Persons previously convicted under banking laws, etc.**

#### Compiler's Notes

Section 170, Ch. 431, Laws 1975, sub-

stituted "department" in this section for "superintendent of banks."

**5-1055. Closing on Saturdays authorized—Saturday treated as holiday.** Any bank as defined in 5-102 and any national bank or national banking association incorporated or organized under the laws of the United States of America and any federal reserve bank may, at its election, remain closed and refrain from the transaction of any business on Saturdays. Any Saturday on which any such bank remains closed shall be, with respect to such bank, a holiday and not a business day. Any act authorized, required, or permitted to be performed on a Saturday at or by or with respect to any bank, including any national bank or national banking association and any federal reserve bank may be performed on the next succeeding business day, and no liability or loss of any rights of any kind shall result from such closing on Saturday or from the nonopening of any bank for the transaction of business on any Saturday under the authority of this act.

**History:** En. Sec. 1, Ch. 124, L. 1955;  
amd. Sec. 23, Ch. 71, L. 1977.

#### Amendments

The 1977 amendment substituted "Any bank as defined in 5-102" for "Any bank, which term for the purposes of this act

shall mean any corporation as defined in section 5-102, including commercial banks and trust companies, as more particularly defined in sections 5-104, 5-105 and 5-106" at the beginning of the first sentence; and made minor changes in phraseology and punctuation.



**5-1058. Definitions.** As used in sections 5-1059 through 5-1062, unless the context otherwise requires:

(1) "Bank" includes commercial banks, savings banks, trust companies, any person or association of persons lawfully carrying on the business of banking, whether incorporated or not, and to the extent that the provisions of sections 5-1059 through 5-1062 are not inconsistent with and do not infringe upon paramount federal law, also includes national banks.

(2) "Officers" means the person or persons designated by the board of directors, board of trustees, or other governing body of a bank, to act for the bank in carrying out the provisions of sections 5-1059 through 5-1062 or, in the absence of a designation or of the officer or officers designated, the president or any other officer currently in charge of the bank or of the office or offices involved.

(3) "Office" means any place at which a bank transacts its business or conducts operations related to its business.

(4) "Emergency" means any condition or occurrence which may interfere physically with the conduct of normal business operations at any of the offices of a bank, or which poses an imminent or existing threat to the safety or security of persons or property, or both. Without limiting the generality of the foregoing, an emergency may arise as a result of any of the following: fire; flood; earthquake; hurricanes; wind, rain, or snowstorms; labor disputes and strikes; power failures; transportation failures; interruption of communication facilities; shortages of fuel, housing, food, transportation or labor; robbery or attempted robbery; actual or threatened enemy attack; epidemics or other catastrophes; riots, civil commotions, and other acts of lawlessness or violence, actual or threatened.

**History:** En. Sec. 1, Ch. 32, L. 1971;  
amd. Sec. 38, Ch. 431, L. 1975.

#### Amendments

The 1975 amendment deleted a former subdivision (1) which defined "commissioner" as "the officer of this state designated by law to exercise supervision over banks, and any other person lawfully exercising such powers"; redesignated subdivisions (2) to (5) as (1) to (4); substituted "sections 5-1059 through 5-1062" for references to this act; and made minor changes in phraseology.

#### Title of Act

An act to permit banks to suspend business during an emergency and on any day or days proclaimed as a day or days of mourning, rejoicing, or other special observance and amending section 19-107, R.C.M. 1947.

**5-1059. Power of department.** When the department is of the opinion that an emergency exists, or is impending, in this state or in any part of this state, it may, by proclamation, authorize banks located in the affected area to close any of their offices. In addition, if the department is of the opinion that an emergency exists, or is impending, which affects, or may affect, a particular bank or banks, or a particular office or offices thereof, but not banks located in the area generally, it may authorize the particular bank or banks, or office or offices so affected, to close. The office or offices so closed shall remain closed until the department proclaims that the emergency has ended, or until such earlier time as the officers of the bank determine that one or more offices, theretofore closed because of the emergency, should reopen, and, in either event, for such further time thereafter as may reasonably be required to reopen.

**History:** En. Sec. 2, Ch. 32, L. 1971; partment" for "commissioner" throughout the section; and made minor changes in phraseology.

**Amendments**

The 1975 amendment substituted "de-

**5-1060. Powers of officers.** (1) When the officers of a bank are of the opinion that an emergency exists, or is impending, which affects, or may affect, any of a bank's offices, they may, in the reasonable and proper exercise of their discretion, determine not to open any of those offices on any banking day or, if having opened, to close any of those offices during the continuation of the emergency, even if the department has not issued and does not issue a proclamation of emergency. An office so closed shall remain closed until the officers determine that the emergency has ended, and for a further time thereafter as may reasonably be required to reopen. However, in no case shall an office remain closed for more than forty-eight (48) consecutive hours, excluding other legal holidays, without requesting the approval of the department.

(2) The officers of a bank may close any of the bank's offices on any day designated, by proclamation of the president of the United States or the governor of this state, as a day of mourning, rejoicing, or other special observance.

**History:** En. Sec. 3, Ch. 32, L. 1971; sections A and B as subsections (1) and (2); substituted "department" for "commissioner" throughout subsection (1); and made minor changes in phraseology.

**Amendments**

The 1975 amendment redesignated sub-

**5-1061. Notice to department.** A bank closing an office under authority granted under section 5-1060(1) shall give as prompt notice of its action as conditions will permit and by any means available, to the department, and in the case of a national bank, to the comptroller of the currency.

**History:** En. Sec. 4, Ch. 32, L. 1971; tion 5-1060(1)" for "section 3(A)"; substituted "department" for "commissioner"; and made minor changes in phraseology.

**Amendments**

The 1975 amendment substituted "sec-

**5-1062. Effect of closing.** (1) A day on which a bank, or any of its offices, is closed during any part of its normal banking hours under sections 5-1059 and 5-1060 with respect to that bank or, if not all of its offices are closed, then with respect to the office or offices which are closed, shall be a legal holiday for all purposes with respect to any banking business. No liability, or loss of rights of any kind, on the part of a bank, or director, officer, or employee thereof, may accrue or result by virtue of a closing authorized by sections 5-1059 and 5-1060.

(2) The provisions of sections 5-1058 through 5-1062 are in addition to any other law of this state or of the United States, authorizing the closing of a bank or excusing the delay by a bank in the performance of its duties and obligations because of emergencies or conditions beyond the bank's control, or otherwise.

**History:** En. Sec. 5, Ch. 32, L. 1971; section designations; substituted references to sections 5-1059 and 5-1060 and amd. Sec. 42, Ch. 431, L. 1975. 5-1058 through 5-1062 for "this act"

**Amendments** throughout the section; and made minor changes in phraseology.  
The 1975 amendment inserted the sub-

## CHAPTER 11—CLOSING AND LIQUIDATION OF BANKS

### Section

- 5-1101. Grounds for closing bank.
- 5-1102. Penalty for closing bank with criminal intent.
- 5-1103. Bank may be placed in department's possession.
- 5-1104. Effect of posting notice.
- 5-1105. Taking possession of bank—notice.
- 5-1106. Resumption after closing.
- 5-1107. Powers of department on closing bank—court proceedings.
- 5-1108. Recourse of aggrieved bank—application to court for injunction—pleadings—evidence—appeals.
- 5-1109. Department may appoint agents—liquidating agents—salaries and expenses.
- 5-1110. Compensation of agents and attorneys.
- 5-1111. Notice to creditors of insolvent bank.
- 5-1112. Claims—allowance and rejection.
- 5-1113. Payment of claims.
- 5-1114. Claims—order of payment—priorities.
- 5-1115. Claims—partial payments.
- 5-1116. Deposit of funds in department's hands.
- 5-1117. Disposition of unclaimed funds.
- 5-1118. Disposition of assets remaining after payment of claims.
- 5-1123. Punishment.
- 5-1126. Power of closed banks to borrow money from governmental agencies.
- 5-1129. Manner of issuing preferred stock.

**5-1101. (6014.131) Grounds for closing bank.** (1) When it appears to the department of business regulation that:

- (a) A bank has willfully violated its charter or a law of this state;
- (b) A bank has willfully violated a general rule of the department, made in accordance with law;
- (c) The capital of a bank is impaired or for any reason is below the amount required by law and has not been made good after notice, as provided by law, or without that notice, in event a majority of the board of directors of the bank notify the department in writing that the impairment cannot be made good;
- (d) A bank cannot meet or has failed to meet its liabilities as they become due in the regular course of business;
- (e) A bank's reserve has fallen below the amount required by law and it has failed to make good that reserve within thirty (30) days after being requested to do so by the department, or, without that notice, if a majority of the directors, in writing, notify the department that the reserve cannot be made good within thirty (30) days, or if it is continually allowing its reserve to fall below the required amount;
- (f) A bank is conducting business in an unsafe and unauthorized manner, or is in an unsafe or unsound condition;
- (g) A bank refused to submit its papers, books and concerns to the inspection of the department; or,
- (h) An officer of a bank has refused to be examined under oath regard-



ing the affairs, business or concerns of any bank in so far as they relate to solvency or matters having to do with the supervision by the department; then the department may, in its discretion, close the bank and take possession of all the books, records, assets and business of every description of the bank, and hold them and retain possession of them until the bank is authorized by the department to resume business, or its affairs are liquidated as provided in this chapter, and it shall do so in cases where a bank comes into its possession voluntarily, or in the manner provided by law.

(2) The powers and authority conferred on the department by this section, except in cases of voluntary surrender are discretionary and not mandatory. As long as the department acts in good faith the department and its employees and agents may not be held liable civilly or criminally or upon their official bonds for action taken under this section or for any failure to act under it.

History: En. Sec. 121, Ch. 89, L. 1927; amd. Sec. 43, Ch. 431, L. 1975.

#### Amendments

The 1975 amendment inserted the numerical subsection designations and reded-

icated the subdivisions in subsection (1); substituted "department of business regulation" and "department" for "superintendent of banks" and "superintendent" throughout the section; and made minor changes in phraseology.

### 5-1102. (6014.132) **Penalty for closing bank with criminal intent.**

If an employee or agent of the department, as a result of malice or for personal gain, declares a bank insolvent, he is subject to a fine not exceeding one thousand dollars (\$1,000) or imprisonment in the county jail not exceeding one (1) year, or both, and shall forfeit his office.

History: En. Sec. 122, Ch. 89, L. 1927; amd. Sec. 44, Ch. 431, L. 1975.

#### Amendments

The 1975 amendment substituted "an

employee or agent of the department" for "any superintendent of banks or official in the department of banking"; and made minor changes in phraseology and style.

### 5-1103. (6014.133) **Bank may be placed in department's possession.**

A bank may place its affairs and assets under the control and in the possession of the department by posting a notice on the front door of the bank, indicating that it is in the possession of the department. The notice shall be signed by a majority of the directors in office of the bank. Immediately upon the posting of the notice by a bank, it shall notify the department of its action.

History: En. Sec. 123, Ch. 89, L. 1927; amd. Sec. 45, Ch. 431, L. 1975.

#### Amendments

The 1975 amendment substituted "de-

partment" for references to superintendent; and made minor changes in phraseology.

### 5-1104. (6014.134) **Effect of posting notice.**

The posting of the notice by the directors of a bank, or of a like notice by the department is sufficient to place all assets and property of the bank, of whatever nature and wherever located, in possession of the department, and operates as a bar to an attachment or other legal proceedings against the bank or its assets. No valid lien or claim can be acquired or created, or transfer or

assignment made in any manner, binding or affecting any of the assets of the bank after the posting of the notice or after taking possession of a bank by the department without its consent.

**History:** En. Sec. 124, Ch. 89, L. 1927; amd. Sec. 46, Ch. 431, L. 1975.

partment" for "superintendent" throughout the section; and made minor changes in style and phraseology.

#### **Amendments**

The 1975 amendment substituted "de-

**5-1105. (6014.135) Taking possession of bank—notice.** On taking possession of the assets and business of the bank, the department shall, in addition to posting notice on the front door of the bank, also notify at once, personally or by wire, all corresponding banks, and all persons or corporations known to it to be in possession of any of the estate of the bank.

**History:** En. Sec. 125, Ch. 89, L. 1927; amd. Sec. 47, Ch. 431, L. 1975.

#### **Amendments**

The 1975 amendment substituted "department" for "superintendent"; and made minor changes in phraseology.

**5-1106. (6014.136) Resumption after closing.** After the department has taken possession of a bank, it may permit that bank to resume business upon conditions which may be approved by the department.

**History:** En. Sec. 126, Ch. 89, L. 1927; amd. Sec. 48, Ch. 431, L. 1975; amd. Sec. 24, Ch. 71, L. 1977.

partment" for "superintendent"; and made minor changes in phraseology.

#### **Amendments**

The 1975 amendment substituted "de-

The 1977 amendment substituted "the department" for "it" at the end of the section.

**5-1107. (6014.137) Powers of department on closing bank—court proceedings.** Upon taking the assets and business of a bank into its possession, the department is authorized to collect all moneys due to that bank, and to do those other acts necessary to conserve its assets and business, and the department shall proceed to liquidate the affairs of the bank. The department may, in its discretion, and except as otherwise limited by the terms of this act, do any acts necessary or desirable for the protection of the property and assets of the bank and the speedy and economical liquidation of the assets and affairs of the bank and the payment of its creditors, or for the reopening and resumption of business where that is practicable or desirable. It may institute, in its own name or in the name of the bank, those suits and other legal proceedings as it considers expedient for those purposes. By applying to the district court of the county in which the bank is located, or to the judge of that court in chambers, the department may obtain an order to sell, compromise, or compound any bad or doubtful debt or claim, and to sell and dispose of any assets, which sale may be made to stockholders, officers, directors, or others interested in the bank, on consent of the court. In the court proceedings the bank shall be made a party by notice issued on order of the court or judge, in place of summons, and served upon some officer of the bank, if there is any in the county. If no officer can be found in the county then the notice shall be posted in three (3) public places in the county for at least ten (10) days before the



day of hearing. The hearing of an application or petition by the department may be had at any time, either in term or vacation in court, or in chambers, as the court may order, after the bank has had five (5) days' notice of the application, or the notice has been posted for at least ten (10) days.

**History:** En. Sec. 127, Ch. 89, L. 1927; amd. Sec. 49, Ch. 431, L. 1975.

partment" for "superintendent" throughout the section; and made minor changes in style and phraseology.

#### Amendments

The 1975 amendment substituted "de-

**5-1108. (6014.138) Recourse of aggrieved bank—application to court for injunction—pleadings—evidence—appeals.** A bank aggrieved by the action of the department in taking possession of its assets or closing its doors may, within ten (10) days after possession has been taken, apply to the district court of the county in which its principal place of business is located, or to the judge of that court in chambers, to enjoin further proceedings by the department. The court or the judge in chambers, after notifying the department to appear at a specified time and place to show cause why further proceedings should not be enjoined, and after hearing the allegations and proofs of the parties, and determining facts, may on the merits dismiss the application or enjoin the department from further proceeding and direct it to surrender the business and assets of the bank. The application for injunction may be heard at any time after five (5) days' notice from the time of service on the department, in the discretion of the court, or at any time prior to then by the consent of the department. Application shall be made on the verified complaint of the bank, in the form used in civil actions, and a copy of the complaint shall be served on the department with the order to show cause. The department shall, at least two (2) days before the time set for hearing, file with the court and serve upon counsel for plaintiff an answer to the complaint, also in the form used in civil actions. Any questions raised by motion in other actions may be raised in the answer. On the issues raised by the complaint and answer, the court, or the judge at chambers, at the time fixed for showing cause, shall try the matter on the merits by hearing the allegations and proofs of the parties and shall enter judgment, as in the trial of other civil actions. If the department makes no appearance in the time allowed, the court shall enter its default and proceed to hear the proofs of the plaintiff as in civil actions under similar circumstances, and enter judgment accordingly. The judgment entered either after hearing on the merits or by default, is a final judgment. During the pendency of litigation the department shall take that action in relation to the assets of the bank which is necessary to conserve them.

**History:** En. Sec. 128, Ch. 89, L. 1927; amd. Sec. 50, Ch. 431, L. 1975.

#### Amendments

The 1975 amendment substituted "department" for "superintendent" throughout the section; deleted "Demurrers and motions directed to pleadings are not per-

missible in proceedings had under this section" from the beginning of the fifth sentence; deleted a clause from the end of the ninth sentence which provided for appeal by either party; and made numerous changes in phraseology and punctuation. For prior version, see parent volume.



**5-1109. (6014.139) Department may appoint agents—liquidating agents—salaries and expenses.** (1) The department may retain those officers or employees of the bank which it considers necessary. It shall require from the agent appointed by it and from those assistants who have charge of any of the assets of the bank that security for the faithful discharge of their duties as it considers proper.

(2) The salary of a liquidating agent and necessary clerical assistance, and other expenses incurred by a liquidating agent, shall be borne equally and ratably by the bank or banks in process of liquidation under the agent's charge in proportion to the total amount of resources of each of the banks. The funds for those expenses shall be raised by assessing each bank in ratio herein set forth and paying those expenses direct to the persons entitled to them, without depositing any of the funds in the state treasury.

**History:** En. Sec. 129, Ch. 89, L. 1927; amd. Sec. 51, Ch. 431, L. 1975.

#### Amendments

The 1975 amendment inserted the subsection designations; deleted from the beginning of subsection (1) provisions for the appointment and compensation of agents, attorneys, expert accountants and

other assistants; substituted references to the department in subsection (1) for references to the superintendent; deleted from the beginning of subsection (2) provisions for the designation of a general liquidating agent, with clerical help, salary and expenses; and made minor changes in phraseology. For prior version, see parent volume.

**5-1110. (6014.140) Compensation of agents and attorneys.** The compensation of the agents, attorneys, expert accountants and other assistants, appointed by the department, and all expenses of liquidation and distribution of a bank whose assets and business have been taken possession of by the department, shall be fixed by the department, but subject to approval by the judge of the district court of the county in which the bank is located, on notice of the bank. The department shall, upon written request of the district judge, supply semiannual statements showing the condition of the bank in process of liquidation. Except in cases of emergency, the compensation paid to attorneys and expert accountants shall be fixed and approved before services are rendered. When the compensation has been fixed and approved and the services rendered, the compensation shall be paid out of the funds of the bank in the hands of the department, and are a proper charge and lien on the assets of the bank.

**History:** En. Sec. 130, Ch. 89, L. 1927; amd. Sec. 52, Ch. 431, L. 1975.

#### Amendments

The 1975 amendment substituted "de-

partment" for "superintendent" and "superintendent of banks" throughout the section; and made minor changes in phraseology and punctuation.

**5-1111. (6014.141) Notice to creditors of insolvent bank.** The department shall give notice by advertisement in a newspaper of general circulation in the town or city in which the bank is situated, if there is one, and if not, then in some other newspaper published in this state, which the department shall designate, once a week for two (2) successive weeks. The notice shall call on all persons who have claims against the bank to present them to the department or its authorized agent at a place to be specified in the notice, and to make sworn proof, in form to be fixed

by the department, within the time specified in the notice, not less than ninety (90) days from the date of the first publication. A copy of the notice shall be mailed to all persons whose names appear as creditors upon the books of the bank.

**History:** En. Sec. 131, Ch. 89, L. 1927;  
amd. Sec. 53, Ch. 431, L. 1975.

**Amendments**

The 1975 amendment substituted "department" for "superintendent"; and made minor changes in phraseology.

**5-1112. (6014.142) Claims—allowance and rejection.** The department shall reject or allow all claims in the whole or in part, and on each claim allowed shall designate the order of its priority. If a claim is rejected or an order of priority allowed lower than that claimed, notice shall be given the claimant personally or by registered mail, and an affidavit of the service of the notice, which shall be prima facie evidence of service, shall be filed in the office of the department. The action of the department is final unless an action is brought by the claimant against the bank in the district court of the county where the bank is located within ninety (90) days after the service to fix the amount of the claim and its order of priority or either. An appeal from the department's allowance, either as to priority or amount, may also be taken to the district court of that county by any party in interest by serving notice on the department, stating the grounds of objection and filing it in that court within thirty (30) days after allowance. Within five (5) days after the notice, the department shall file in the court, and serve on the appellant, a copy of the claim and its reasons for allowance. The court shall, after five (5) days' notice of time and place of hearing on the issues raised, hear the proof of the parties and enter judgment reversing, affirming or modifying the department's action.

**History:** En. Sec. 132, Ch. 89, L. 1927;  
amd. Sec. 54, Ch. 431, L. 1975.

ences to the department for references to the superintendent; and made minor changes in phraseology.

**Amendments**

The 1975 amendment substituted refer-

**5-1113. (6014.143) Payment of claims.** Claims presented to the department prior to the expiration of the time fixed in the notice to creditors, and allowed by it, shall be paid in the order of priority fixed in this chapter. Those filed after that expiration and within one year of that expiration are entitled, after they have been allowed by the department, to share in the distribution of the assets of the bank only to the extent of the assets undistributed in the hands of the department and available for the payment of claims of their order of priority at the time the claims are filed. As against other claims of the same order of priority, on which dividends have been paid, they are entitled to payment in a proportionate amount before further payments are made on those other claims. All claims filed after the expiration of one year following the date fixed in the notice to creditors as the time for presentation of claims are not entitled to be allowed or paid unless all other creditors' claims of any kind, except claims of shareholders, based on stock or assessments paid on stock have been

fully paid, and a surplus remains in the hands of the department, and then only from that surplus.

**History:** En. Sec. 133, Ch. 89, L. 1927;  
amd. Sec. 55, Ch. 431, L. 1975.

**Amendments**

The 1975 amendment substituted "department" for "superintendent"; and made minor changes in phraseology.

**5-1114. (6014.144) Claims—order of payment—priorities.** (1) Except as otherwise provided by the Uniform Commercial Code, the order of payment of the debts of a bank liquidated by the department shall be as follows:

(a) The expense of liquidation, including compensation of agents, employees, and attorneys;

(b) All funds of any other bank in process of liquidation by the department and placed on deposit by the department;

(c) All funds held by the bank in trust;

(d) Debts due depositors, holders of cashier's checks, certified checks, drafts on correspondent banks, including protest fees, paid by them on valid checks or drafts presented after closing of the bank, pro rata. All deposit balances of other banks or trust companies, and all deposits of public funds of every kind (except those actually placed on special deposit under the statutes providing therefor), including those of the United States, the state of Montana, and every county, district, municipality, political subdivision, or public corporation of this state, whether secured or unsecured, or whether deposited in violation of law or otherwise, are included within the terms of this subsection (1)(d) and take the same priority as debts due any other depositor. All contractual liabilities pro rata. Accrued interest on savings accounts, certificates of deposit, or other interest-bearing contracts, up to the time of the closing of the bank, shall be considered as part of the debt due.

(e) Interest on the classes of claims contained in subsections (1)(a) through (1)(d) of this section without regard to the priority computed from the date of closing of the bank at the rate of seven per cent (7%) a year;

(f) Unliquidated claims for damages and similar claims, including claims of stockholders for amounts claimed to have been voluntarily advanced to the bank or paid in by way of special or voluntary or other assessments. The department may, in its discretion, without regard to the priorities fixed in subsections (1)(c) through (1)(f) of this section, or in preference to the payment of any claims of creditors within these subsections, pay off and discharge any lien, claim, or charge against the assets or property of the bank in its hands and pay those sums it considers necessary for the preservation, maintenance, conservation, and protection of those assets and property, and likewise property on which the bank has liens by mortgage or otherwise. It may also in its discretion create a fund or retain in its hands, in preference to the claim of any creditors in subsections (1)(c) through (1)(f), moneys for those purposes.

(2) Collateral which has been put up or pledged as security for the payment of bills payable by a bank, or loans or discounts which have been



outstanding as rediscounts of a bank prior to the closing of it, is not available to the other creditors of the bank in whole or in part until the bills payable or rediscounts have been retired, after which offsets as provided in this section shall be allowed.

(3) Deposits of a person, firm, or corporation in a bank which is in the possession of the department may be offset against any indebtedness, (subject to the conditions of subsection (2) of this section), except assessments on stock, due to the bank from that person, firm, or corporation. All dividends when declared in favor of a creditor of the bank may be applied, in the discretion of the department, in satisfaction of the indebtedness, if any, due the bank from the creditor.

**History:** En. Sec. 134, Ch. 89, L. 1927; amd. Sec. 4, Ch. 145, L. 1931; amd. Sec. 11-104, Ch. 264, L. 1963; amd. Sec. 56, Ch. 431, L. 1975.

former subdivisions (1) through (6) as subdivisions (1)(a) through (1)(f); redesignated former subdivisions (7) and (8) as subsections (2) and (3); substituted references to the department for references to the superintendent; and made minor changes in punctuation and phraseology.

#### Amendments

The 1975 amendment inserted the subsection (1) designation; redesignated

**5-1115. (6014.145) Claims—partial payments.** (1) The department need not await the expiration of the time allowed for filing claims, as fixed in the notice to the creditors, for the payment of dividends. It may, in its discretion and if under the circumstances of the particular case it considers it expedient and safe, at any time after taking possession of the bank and prior to the expiration of the period fixed for filing of claims, if it has on hand in cash sufficient funds over and above the expenses of liquidation, make pro rata distribution to any class of creditors next entitled to distribution, in the order of priority fixed in this chapter, making that payment to the creditors as they appear on the books and records of the bank and determining the priority and basing its apportionment on the amount shown to be due by the books and records.

(2) At any time after the expiration of the date fixed for the presentation of claims against the bank and from time to time thereafter when, in its discretion, there are sufficient funds available, the department shall, after making proper provisions for the payment of expenses of liquidation, declare and pay dividends to all creditors of the bank pro rata in the order of their priority. If, after the time fixed for presentation of claims against the bank has expired, it appears that a person, prior to the expiration of the period or at any other time, has been paid more than the pro rata amount due him as compared with the amounts then paid other creditors, nothing more may be paid that creditor until the payment made other creditors places them on equal footing.

(3) In calculating dividends, all disputed claims and deposits shall be taken into account and the amount of dividends upon the disputed claims or deposits shall be held by the department until the validity of those claims or deposits has been finally determined.

(4) Claims against a bank in process of liquidation may be assigned in whole or in part subject to the approval of the department. Assignments of claims are binding upon the department only after they have been filed

and allowed by the department and are subject to the payment of the assignor's liabilities to the bank. An assignment shall be made by filing written notice, signed by the original claimant, with the department or person in charge of the bank. No assigned claims may be offset against obligations due the bank. A check or draft drawn against a bank closed or taken possession of by the department, whether issued before or after closing, may not be recognized as a claim against the bank or as an assignment of any amount, whether protested or not protested.

**History:** En. Sec. 135, Ch. 89, L. 1927; amd. Sec. 5, Ch. 145, L. 1931; amd. Sec. 57, Ch. 431, L. 1975; amd. Sec. 25, Ch. 71, L. 1977.

#### Amendments

The 1975 amendment substituted "department" for references to the superin-

tendent; and made minor changes in phraseology and punctuation.

The 1977 amendment inserted the subsection designations; substituted "may not be recognized" for "shall not be recognized" in the last sentence of subsection (4); and made minor changes in phraseology and punctuation.

**5-1116. (6014.146) Deposit of funds in department's hands.** All funds in the hands of the department belonging to a bank in process of liquidation shall be deposited in the department's name in those banks within the state which may be selected and designated by it and subject to its checks. Those funds are to be preferred and protected as provided in this act.

**History:** En. Sec. 136, Ch. 89, L. 1927; amd. Sec. 58, Ch. 431, L. 1975.

#### Amendments

The 1975 amendment substituted refer-

ences to the department for references to the superintendent; and made minor changes in phraseology.

**5-1117. (6014.147) Disposition of unclaimed funds.** (1) The department shall certify to the state treasurer a complete list of funds remaining with it uncalled for, which have been left with it in its official capacity, in trust for depositors in and creditors of a liquidated bank after they have been held by it for six (6) months from the date of the final liquidation of the institution. Along with this certificate, it shall transmit to the state treasurer the funds with accumulated interest on them, which it has so held in trust for six (6) months. A copy of the certificate shall also be filed with the state auditor, who shall make a record of it.

(2) The state treasurer shall deposit the funds and interest in the general fund of this state.

(3) A depositor or creditor of a liquidated bank who has not been paid the amount standing to his credit as thus certified to the state treasurer, may apply to the department for the amount due him. The depositor or creditor shall make an affidavit and offer proof of his identity and of the amount due him by the liquidated bank. When satisfied as to the correctness of the claim and of the identity of the person, the department shall forward it to the auditor, who shall audit the claim and if found correct so certify to the department, which, if it approves the claim, shall transmit the claim to the legislature with a statement of its approval.

**History:** En. Sec. 137, Ch. 89, L. 1927; amd. Sec. 1, Ch. 143, L. 1961; amd. Sec. 59, Ch. 431, L. 1975; amd. Sec. 2, Ch. 343, L. 1977.

#### Amendments

The 1975 amendment inserted the subsection designations; substituted "department" for "superintendent"; and made minor changes in phraseology.



The 1977 amendment substituted "department" for "state board of examiners" throughout subsection (3).

**5-1118. (6014.148) Disposition of assets remaining after payment of claims.** (1) When the department has paid to each depositor and creditor of the bank whose claims have been approved and allowed as provided in this chapter, the amount due on them, or made satisfactory adjustment of them, and has made provisions for unclaimed and unpaid deposits and disputed claims and deposits, and has paid all the expenses of liquidation, it shall file with the clerk of the district court of the county in which the bank is located, a report of its administration of the trust. If there are remaining assets on hand the department may apply to the judge of that court in open court or in chambers, for an order authorizing it to surrender the remaining assets together with all the stationery, correspondence, books and records, kept by the bank while it was a going concern to the directors of the bank in office at the time of closing it, as trustees for stockholders, or to that other person, if any, designated as trustee by a majority of the stockholders. The report and petition shall be set for hearing upon notice which the court may direct. Upon hearing and approval of the report and account and the surrender of the assets as directed, the department is discharged from all further liability or responsibility in connection with the assets and affairs of the bank. The court may, if requested, require the trustees to give bond in an amount the court may fix, conditioned for the faithful performance of their duties. The trustee or trustees shall complete the liquidation of any remaining assets and may sell and dispose of real and personal property as rapidly as possible and shall distribute the proceeds among the stockholders as their rights may appear, or dispose of the proceeds in some other manner as the stockholders shall by majority action, direct. The court may upon request of a majority of the stockholders order the department to close up the trust as provided in subsection (2) of this section.

(2) If the assets of the bank are insufficient for making payments in full to the depositors and creditors of the bank, then, when the department has liquidated all available assets and disbursed them as provided by law, the department shall file with the clerk of court of the county in which the bank is located, a final report of its liquidation of the bank. Upon notice which the court may order, the report shall be set for hearing before the court and if found correct and all funds accounted for, the court shall approve it. The department may at the same time and in the report make application to the district court of the county in which the bank is located, for an order directing the closing of the trust and upon entry of the order closing the trust the department is discharged from all further liability or responsibility in connection with the assets and affairs of the bank. The charter of the bank shall be forfeited and all the stationery, correspondence, books, and records kept by the bank while it was a going concern, and considered by the department to be of no value, may be destroyed. However, no correspondence or records may be destroyed until ten (10) years after the date the bank ceased to be a going concern.



(3) On application for orders, as provided in this section, the bank shall be made a party by notice issued on order of the court or judge and served in a manner the court directs and applications authorized by this section may be heard at any time in court or in chambers, as the court may order, upon not less than five (5) days' posted or served notice of the hearing.

**History:** En. Sec. 138, Ch. 89, L. 1927; amd. Sec. 1, Ch. 78, L. 1935; amd. Sec. 60, Ch. 431, L. 1975.

**Amendments**

The 1975 amendment redesignated sub-

sections (a) to (c) as (1) to (3); substituted "department" for references to the superintendent of banks throughout the section; and made minor changes in phraseology and punctuation.

**5-1119 to 5-1121. (6014.149 to 6014.151) Repealed.**

**Repeal**

Sections 5-1119 to 5-1121 (Secs. 139 to 141, Ch. 89, L. 1927), relating to procedure for banks in voluntary liquidation or liqui-

dation by receivers as of 1927, and the effect of the 1927 act on banks then existing, were repealed by Sec. 176, Ch. 431, Laws 1975.

**5-1123. (6014.153) Punishment.** When no other punishment is provided, a person willfully or knowingly violating this act, is guilty of a misdemeanor. The attorney general upon information furnished by the department, shall sue to enforce this act.

**History:** En. Sec. 143, Ch. 89, L. 1927; amd. Sec. 61, Ch. 431, L. 1975.

**Amendments**

The 1975 amendment deleted from the end of the first sentence "and shall be punished by a fine of not more than five

hundred dollars (\$500.00) or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment"; substituted "department" for "superintendent of banks"; and made minor changes in phraseology.

**5-1124. (6014.154) Repealed.**

**Repeal**

Section 5-1124 (Sec. 1, Ch. 129, L. 1931), relating to maintenance of offices of consolidated banks, was repealed by Sec. 1, Ch. 205, Laws 1969. Section 2 of the re-

pealing act provided that the repeal did not affect any transaction, proceeding or application pending or consummated on or prior to effective date of repeal.

**5-1125. (6014.155) Repealed.**

**Repeal**

Section 5-1125 (Sec. 1, Ch. 132, L. 1925), relating to public deposits in insolvent

banks having no preference, was repealed by Sec. 39, Ch. 71, Laws 1977.

**5-1126. (6015.1) Power of closed banks to borrow money from governmental agencies.** After applying to and obtaining the approval of the department and the district court of the county in which the bank or trust or investment company is located, and notwithstanding any other law, the liquidating agents of closed banks may borrow money from an agency of the federal government on behalf of commercial banks, savings banks, trust companies, and investment companies closed and in liquidation. As security for the loan the liquidating agent may pledge or mortgage the assets and properties thereof for the purpose of paying depositors or creditors in part or in full.

**History:** En. Sec. 1, Ch. 3, Ex. L. 1933; amd. Sec. 62, Ch. 431, L. 1975; amd. Sec. 26, Ch. 71, L. 1977.

#### Amendments

The 1975 amendment substituted "department" for "superintendent of banks"; substituted "an agency of the federal government" for "the Reconstruction Finance Corporation or other governmental agen-

cy"; and made minor changes in phraseology.

The 1977 amendment deleted "upon the court proceedings prescribed in section 5-1107" after "located" in the first sentence; inserted "the liquidating agent" near the beginning of the second sentence; and made minor changes in phraseology and punctuation.

**5-1129. (6016.3) Manner of issuing preferred stock.** The preferred stock may be issued and sold upon terms and conditions approved by the department, or required for the purchase of the stock by an agency or quasi-agency of the federal government.

**History:** En. Sec. 3, Ch. 15, Ex. L. 1933; amd. Sec. 63, Ch. 431, L. 1975.

#### Amendments

The 1975 amendment substituted "de-

partment" for "superintendent of banks"; deleted "the Reconstruction Finance Corporation" before "an agency or quasi-agency"; and made minor changes in phraseology.

**5-1130. (6017.1) Borrowing money for capital purposes, etc.**

#### Compiler's Notes

Section 170, Ch. 431, Laws 1975, sub-

stituted "department" in this section for "superintendent of banks."

### CHAPTER 12—FEDERAL DEPOSIT INSURANCE CORPORATION AID AVAILABLE TO BANKING INSTITUTIONS

#### Section

**5-1202.** Banking institutions may take advantage of federal deposit insurance corporation aid.

**5-1203.** Appointment of the corporation as agent.

**5-1205.** Examinations by the corporation may be accepted—effect of act.

**5-1206.** Closed banking institutions may borrow from the corporation.

**5-1202. Banking institutions may take advantage of federal deposit insurance corporation aid.** A banking institution may, on the authority of its board of directors, or a majority thereof, enter into those contracts, incur those obligations and generally perform any acts necessary or appropriate in order to take advantage of any memberships, loans, subscriptions, contracts, grants, rights, or privileges, available to banking institutions or to their depositors, creditors, stockholders, conservators, or liquidators, by virtue of those provisions of the Federal Deposit Insurance Act, which establish the Federal Deposit Insurance Corporation and provide for the insurance of deposits, or of any other act or resolution of Congress to aid, regulate, or safeguard banking institutions and their depositors. A banking institution may also subscribe for and acquire stock, debentures, bonds, or other types of securities of the Federal Deposit Insurance Corporation, and may comply with the lawful rules and requirements from time to time adopted by that corporation.

**History:** En. Sec. 2, Ch. 197, L. 1937; amd. Sec. 64, Ch. 431, L. 1975.

#### Amendments

The 1975 amendment substituted "provi-

sions of the Federal Deposit Insurance Act" for "provisions of section 12B of the Federal Reserve Act, as amended" in the first sentence; and made minor changes in phraseology and punctuation.

**5-1203. Appointment of the corporation as agent.** If a banking institution, the deposits in which are in any extent insured by the Federal Deposit Insurance Corporation created by the Federal Deposit Insurance Act, 12 U.S.C. sections 1811-1831, is closed on account of inability to meet the demands of its creditors, the department of business regulation may appoint the corporation agent, without bond, to assist it or act for it in the liquidation of that banking institution.

**History:** En. Sec. 3, Ch. 197, L. 1937; amd. Sec. 65, Ch. 431, L. 1975.

**Amendments**

The 1975 amendment substituted "the Federal Deposit Insurance Act, 12 U.S.C.

sections 1811-1831" for "section 12B of the Federal Reserve Act as amended"; substituted "department of business regulation" for "superintendent of banks"; and made minor changes in phraseology.

**5-1204. Subrogation of corporation to certain rights.**

**Compiler's Notes**

Section 170, Ch. 431, Laws 1975, sub-

stituted "department" in this section for "superintendent of banks."

**5-1205. Examinations by the corporation may be accepted—effect of act.** (1) The department may accept, in its discretion, in place of any examination authorized by the laws of this state to be conducted by the department of a banking institution, the examination made of it within a reasonable period by the Federal Deposit Insurance Corporation, if a signed copy of the examination is furnished to the department. The department may, also in its discretion, accept a report relative to the condition of a banking institution obtained by the corporation within a reasonable period, in place of a report authorized by the laws of this state to be required of the institution by the department, if a copy of the report is furnished to the department. The department may in its discretion disclose to the corporation, or an official or examiner thereof, any information possessed by the department with reference to the conditions or affairs of an insured institution.

(2) The department may furnish to the corporation, or to an official or examiner thereof, a copy or copies of any examinations made of those banking institutions and of any reports made by them.

(3) Nothing in this section limits the duty of any banking institution in this state, deposits in which are to any extent insured under the Federal Deposit Insurance Act, or any substitution for it, to comply with the provisions of that act, its substitutions, or the requirements of that corporation relative to examinations and reports, nor limits the powers of the department with reference to examinations and reports under existing law.

**History:** En. Sec. 5, Ch. 197, L. 1937; amd. Sec. 66, Ch. 431, L. 1975.

**Amendments**

The 1975 amendment divided the section into subsections; substituted "department"

for "superintendent of banks" throughout the section; substituted "Federal Deposit Insurance Act" for "section 12B of the Federal Reserve Act, as amended"; and made minor changes in phraseology and punctuation.

**5-1206. Closed banking institutions may borrow from the corporation.** If a banking institution is closed on account of inability to meet the de-



mands of its depositors or by action of the department or by action of its directors or in the event of its insolvency or suspension, the department or its agent, with the permission of the court having jurisdiction, may borrow from the corporation and furnish any of the assets of the institution to the corporation as security for a loan from it. The department upon the order of a district court of competent jurisdiction may sell to the corporation any part or all of the assets of the institution. The provisions of this section do not limit the power of a banking institution, or the department to pledge or sell assets in accordance with any existing law.

**History:** En. Sec. 6, Ch. 197, L. 1937; amd. Sec. 67, Ch. 431, L. 1975.

partment" for "superintendent of banks"; substituted "district court" for "court of record"; and made minor changes in phraseology.

#### **Amendments**

The 1975 amendment substituted "de-

### **CHAPTER 13—MORRIS PLAN COMPANIES**

(Repealed—Section 176, Chapter 431, Laws of 1975)

#### **5-1301 to 5-1311. (6109.1 to 6109.11) Repealed.**

##### **Repeal**

Sections 5-1301 to 5-1311 (Secs. 1 to 11, Ch. 119, L. 1925), relating to Morris plan

companies, were repealed by Sec. 176, Ch. 431, Laws 1975.

### **CHAPTER 14—UNIFORM COMMON TRUST ACT**

#### **Section**

5-1401. Common trust fund authorized.

5-1407. Common trust funds—affiliates.

**5-1401. Common trust fund authorized.** A bank or trust company qualified to act as fiduciary in this state may establish common trust funds for the purpose of furnishing investments to itself as fiduciary, or itself and others, as cofiduciaries. It may, as that fiduciary or cofiduciary, invest funds which it lawfully holds for investment in interests in the common trust fund, if the investment is not prohibited by the instrument, judgment, decree, or order creating the fiduciary relationship, and if in the case of cofiduciaries, the bank or trust company procures the consent of its cofiduciary or cofiduciaries to the investment. A bank or trust company qualified to act as fiduciary in this state, which is not a member of the federal reserve system, shall, in operation of the common trust fund, comply with the rules adopted by the department of business regulation, and the department may adopt rules it considers necessary and proper in the premises.

**History:** En. Sec. 1, Ch. 64, L. 1955; amd. Sec. 68, Ch. 431, L. 1975.

near the end of the section; and made minor changes in phraseology and punctuation.

#### **Amendments**

The 1975 amendment substituted references to the department of business regulation for references to the state examiner and ex officio superintendent of banks

NOTE.—Uniform State Law. The "Uniform Common Trust Fund Act" has also been adopted in Alaska and Massachusetts.

**5-1407. Common trust funds—affiliates.** (1) Notwithstanding the provisions of 5-1401, any bank or trust company qualified to act as fiduciary in this state may:

(a) establish and maintain common trust funds for the collective investment of funds held in any fiduciary capacity by it or by another bank or trust company which is owned or controlled by a corporation which owns or controls such bank or trust company; and

(b) as a fiduciary or cofiduciary, invest funds which it holds for investment in common trust funds established and maintained pursuant to subsection (a) if such investment is not prohibited by the instrument, judgment, decree, or order creating such fiduciary relationship. This section applies to fiduciary relationships now in existence or hereafter created.

(2) To the extent not inconsistent with the provisions of this section, the provisions of 5-1401 through 5-1406 relating to common trust funds shall apply to the establishment and maintenance of common trust funds under this section.

**History:** En. 5-1407 by Sec. 1, Ch. 271, L. 1977. mon trust funds for collective investment of funds by affiliated banks or trust companies.

**Title of Act**

An act to permit establishment of com-

## CHAPTER 15—SUBSIDIARY TRUST COMPANY ACT

**Section**

5-1501. Short title.

5-1502. Definitions.

5-1503. Organization of subsidiary trust companies.

5-1504. Permissible business of subsidiary trust companies.

5-1505. Trust offices of subsidiary trust companies.

5-1506. Trust offices of affiliated banks.

5-1507. Transfer of fiduciary relationships from affiliated banks to subsidiary trust companies.

5-1508. Transfer of fiduciary relationships between affiliated banks.

**5-1501. Short title.** This act may be cited as "The Subsidiary Trust Company Act of 1975."

**History:** En. 5-1501 by Sec. 1, Ch. 401, L. 1975.

**Title of Act**

An act to authorize subsidiary trust companies to have one or more trust of-

fices; to authorize certain banks to maintain one or more trust offices; to provide for substitution in fiduciary capacities; to amend section 86-905, R. C. M. 1947; and to provide an immediate effective date.

**5-1502. Definitions.** As used in this act:

(1) "subsidiary trust company" means any corporation which is incorporated under the banking laws of this state and any national banking association having its main office in this state more than fifty per cent (50%) of the voting stock of which is owned by an owning bank holding company and which has as its purposes any one or more of the purposes described in section 5-106, except that a subsidiary trust company may not be empowered to accept deposits or otherwise to conduct commercial banking business.

(2) "affiliated bank" with respect to a subsidiary trust company, means any bank incorporated under the laws of this state and any national banking association having its main office in this state more than fifty per cent (50%) of the voting stock of which is owned by the same owning bank holding company that owns more than fifty per cent (50%) of the voting stock of the subsidiary trust company.

(3) "affiliated bank" with respect to another bank which is not a subsidiary trust company, means any bank incorporated under the laws of this state and any national banking association having its main office located in this state more than fifty per cent (50%) of the stock of which is owned by the same owning bank holding company that owns more than fifty per cent (50%) of the voting stock of such other bank.

(4) "owning bank holding company," with respect to a subsidiary trust company or an affiliated bank, means a bank holding company as defined in the United States Bank Holding Company Act of 1956, as amended.

(5) "main office," with respect to a subsidiary trust company or an affiliated bank, is the place designated in the articles of incorporation or articles of association of that subsidiary trust company or affiliated bank at which its principal functions are to be conducted.

(6) "trust office," with respect to a subsidiary trust company, means an office, including the main office, of the subsidiary trust company maintained for the purpose of conducting its business.

(7) "trust office," with respect to a bank which is not a subsidiary trust company, means an office other than the main office of that bank maintained solely for the purpose of conducting trust business as described in section 4 [5-1504].

(8) "fiduciary capacity" means a capacity resulting from a bank undertaking to act alone or jointly with others primarily for the benefit of another in all matters connected with its undertaking and includes the capacities of trustee (including trustee of a common trust fund), executor, administrator, personal representative, registrar or transfer agent with respect to stocks, bonds or other evidences of indebtedness of any corporation, association, municipality, state or public authority, guardian of estates, receiver, conservator, escrow agent, agent for the investment of money, attorney in fact and any other similar capacity.

History: En. 5-1502 by Sec. 2, Ch. 401,  
L. 1975.

**5-1503. Organization of subsidiary trust companies.** A subsidiary trust company shall be incorporated under the laws of this state in accordance with, and subject to, the provisions of chapter 2 of Title 5, R. C. M. 1947, or under the laws of the United States. To the extent not inconsistent with the provisions of this chapter, any subsidiary trust company incorporated under the laws of this state shall be subject to the laws of this state generally applicable to trust companies. A subsidiary trust company formed under the laws of the United States, shall be subject, to the extent provided by the laws of the United States, to the laws of this state



applicable to subsidiary trust companies incorporated under the laws of this state.

History: En. 5-1503 by Sec. 3, Ch. 401,  
L. 1975.

**5-1504. Permissible business of subsidiary trust companies.** The permissible business of a subsidiary trust company shall be to engage in such trust business as may be engaged in by a trust company under section 5-106 and such business as is incidental thereto. A subsidiary trust company shall not accept deposits or otherwise conduct commercial banking business.

History: En. 5-1504 by Sec. 4, Ch. 401,  
L. 1975.

**5-1505. Trust offices of subsidiary trust companies.** Notwithstanding the provisions of section 5-1028, a subsidiary trust company may have a trust office at any one or more locations in this state in the same building with the main office of any affiliated bank which, on January 1, 1975, was authorized to act in fiduciary capacities, but not elsewhere.

History: En. 5-1505 by Sec. 5, Ch. 401,  
L. 1975.

**5-1506. Trust offices of affiliated banks.** Notwithstanding the provisions of section 5-1028, a bank having trust powers may be authorized by the department of business regulation or by the comptroller of the currency, in the case of a national banking association, to maintain a trust office at any one or more locations in this state in the same building with the main office of any affiliated bank which, on January 1, 1975, was authorized to act in fiduciary capacities.

History: En. 5-1506 by Sec. 6, Ch. 401,  
L. 1975.

**5-1507. Transfer of fiduciary relationships from affiliated banks to subsidiary trust companies.** (1) Upon any subsidiary trust company being duly authorized to commence the business for which it is organized, such subsidiary trust company may file its verified application in the district court of the county in which its main office is located requesting that it be substituted, except as may be expressly excluded in such application, in every fiduciary capacity for each of its affiliated banks specified in the application, and each such specified affiliated bank shall join in such application. Such application shall indicate the county wherein the main office of each affiliated bank joining in the application is located and shall designate each fiduciary account existing at the date thereof with respect to which such subsidiary trust company requests substitution, but fiduciary capacities in other cases need not be listed. Such application shall additionally set forth, with regard to each existing fiduciary account designated therein, the name and address last known to the applicant of each person entitled to mailed notice of hearing thereon, to wit:

(a) in the case of an existing fiduciary account which may be revoked, terminated or amended, each person who, alone or together with others, is empowered to revoke, terminate or amend the same;

(b) in the case of an existing fiduciary account with respect to which any person other than a court has the power to remove the corporate fiduciary, each person who, alone or together with others, is empowered to remove the corporate fiduciary;

(c) in the case of an existing fiduciary account which is an estate of a deceased person or which is a guardianship or conservatorship, to the clerk of the court in which such estate, guardianship or conservatorship matter is pending;

(d) in the case of an existing fiduciary account not described in any of the foregoing subparagraphs, to each income beneficiary of such account and to each beneficiary who, were such account terminated at the date of the application respecting such account, would be entitled to share in distributions of income or principal thereof; and

(e) in the case of any existing fiduciary account wherein an affiliated bank specified in the application is acting with a co-fiduciary, to each such co-fiduciary at his last known address.

(2) When any such application shall have been filed, the clerk of the court where filed shall make an order fixing a date and time for hearing thereon and give notice thereof as hereinafter provided. The clerk of court shall cause a copy of such notice to be published at least once a week for three (3) successive weeks preceding the hearing date, the first such publication to be at least twenty-five (25) days preceding the hearing date, such publication to be in a newspaper of general circulation published in each county in which the main office of an affiliated bank specified in the application is located, or if in any case there be no such newspaper, then in a newspaper of general circulation published in a contiguous county. In addition, at least twenty-five (25) days preceding the hearing date, the clerk of the court shall cause a copy of such notice to be mailed by first class mail to each person identified in the application as being entitled to mailed notice under the provisions of this act, at his address last known to the applicant as set forth in the application.

(3) The notice to be published and mailed with respect to each such application shall state the time and place of the hearing thereon, the name of the subsidiary trust company which has filed the application, the name of each affiliated bank which has joined in such application, that the application requests that the subsidiary trust company be substituted in every fiduciary capacity for each of its affiliated banks specified in the application, and that any person beneficially interested in any affected fiduciary account may appear on or before the date of hearing and file his written objection to such substitution as to such affected fiduciary account, and such notice shall refer to such application for further particulars.

(4) On or before the date and time of hearing any such application, any person beneficially interested in any fiduciary account as to which substitution of the subsidiary trust company is requested, may appear and file objection to substitution, and shall be entitled to be heard with respect to such objection.

(5) On such date of hearing, upon finding that due notice has been given as required by this act and upon finding that the subsidiary trust



company has been duly authorized to commence the business for which it is organized by the department of business regulation, or the comptroller of the currency if the subsidiary trust company is a national banking association, the district court shall enter an order substituting the subsidiary trust company in every fiduciary capacity for each of its specified affiliated banks, excepting as may be otherwise specified in the application, and excepting fiduciary capacities in any account with respect to which an objection has been filed pursuant to this section. Upon entry of such order, the subsidiary trust company shall, without further act, be substituted in every such fiduciary capacity. Such substitution may be made a matter of record in any county of this state by filing a certified copy of the order of substitution in the office of the clerk of any district court in this state or by filing a certified copy of such order in the office of the clerk and recorder of any county in this state to be by such officer recorded and indexed in like manner and with like effect as other orders and decrees of court are recorded and indexed.

(6) Each designation in a will or other instrument heretofore or hereafter executed of a bank as fiduciary shall be deemed a designation of the subsidiary trust company substituted for such bank pursuant to this section except where such will or other instrument is executed after such substitution and expressly negates the application of this section. Any grant in any such will or other instrument of any discretionary power shall be deemed conferred upon the subsidiary trust company deemed designated as the fiduciary pursuant to this section.

(7) A bank shall account jointly with the subsidiary trust company which has been substituted as fiduciary for such bank pursuant to this section for the accounting period during which the subsidiary trust company is initially so substituted. Upon substitution pursuant to this section, the bank shall deliver to the subsidiary trust company all assets held by the bank as fiduciary (except assets held for accounts with respect to which there has been no substitution pursuant to this section) and upon such substitution all such assets shall become the property of the subsidiary trust company without the necessity of any instrument of transfer or conveyance.

History: En. 5-1507 by Sec. 7, Ch. 401,  
L. 1975.

#### **5-1508. Transfer of fiduciary relationships between affiliated banks.**

(1) Any bank which has received approval pursuant to 5-1506 to maintain a trust office in the same building with the main office of any affiliated bank may file its verified application in the district court of the county in which its main office is located requesting that it be substituted, except as may be expressly excluded in such application, in every fiduciary capacity for such affiliated bank, and such affiliated bank shall join in such application. Such application shall indicate the county wherein the main office of such affiliated bank is located and shall designate each fiduciary account existing at the date thereof with respect to which the applicant bank requests substitution, but fiduciary capacities in other cases need not be listed. Such application shall additionally set forth, with regard to each existing



fiduciary account designated therein, the name and address last known to the applicant of each person entitled to mailed notice of hearing thereon, who shall be those persons specified in subsections (1)(a) through (1)(e) of 5-1507.

(2) When any such application has been filed, the clerk of the court where filed shall make an order fixing a date and time for hearing thereon and shall cause notice thereof to be given by publication and mailing in the manner required by 5-1507.

(3) The notice to be published and mailed with respect to each application shall state the time and place of the hearing thereon, the name of the bank which has filed the application, the name of the affiliated bank which has joined in such application, that the application requests that the applicant bank be substituted in every fiduciary capacity for the affiliated bank specified in the application, and that any person beneficially interested in any affected fiduciary account may appear on or before the date of hearing and file his written objection to such substitution as to such affected fiduciary account, and such notice shall refer to such application for further particulars.

(4) On or before the date and time of hearing any such application, any person beneficially interested in any fiduciary account as to which substitution of the applicant bank is requested may appear and file objection to substitution and shall be entitled to be heard with respect to such objection.

(5) On such date of hearing, upon finding that due notice has been given as required by this act and upon finding that the applicant bank has received the requisite approval from the department or the comptroller of the currency if the applicant bank is a national banking association, the district court shall enter an order substituting the applicant bank in every fiduciary capacity for the affiliated bank designated in the application, excepting as may be otherwise specified in the application and excepting fiduciary capacities in any account with respect to which an objection has been filed pursuant to this section. Upon entry of such order, the applicant bank shall, without further act, be substituted in every such fiduciary capacity. Such substitution may be made a matter of record in any county of this state by filing a certified copy of the order of substitution in the office of the clerk of any district court in this state or by filing a certified copy of such order in the office of the clerk and recorder of any county in this state to be by such officer recorded and indexed in like manner and with like effect as other orders and decrees of court are recorded and indexed.

(6) Each designation, in a will or other instrument heretofore or hereafter executed, of a bank as fiduciary shall be deemed a designation of the applicant bank substituted for such bank pursuant to this section except where such will or other instrument is executed after such substitution and expressly negates the application of this section. Any grant in any such will or other such instrument of any discretionary power shall be deemed conferred upon the applicant bank deemed designated as the fiduciary pursuant to this section.

(7) A bank shall account jointly with the applicant bank which has been substituted as fiduciary for such bank pursuant to this section for the accounting period during which the applicant bank is initially so substituted. Upon substitution pursuant to this section, the affiliated bank for which substitution has been made shall deliver to such applicant bank all assets held by such affiliated bank as fiduciary (except assets held for accounts with respect of which there has been no substitution pursuant to this section) and upon such substitution all such assets shall become the property of such applicant bank without the necessity of any instrument of transfer or conveyance.

**History:** En. 5-1508 by Sec. 8, Ch. 401, L. 1975; amd. Sec. 27, Ch. 71, L. 1977.

#### Amendments

The 1977 amendment substituted "subsections (1)(a) through (1)(e) of 5-1507" for "subsections (a) to (e), inclusive, of

section 5-1507" at the end of the third sentence of subsection (1); deleted "of business regulation" after "department" near the beginning of the first sentence of subsection (5); and made minor changes in phraseology and punctuation.

### CHAPTER 16—DEPOSIT OF SECURITIES BY FIDUCIARIES

#### Section

5-1601. Definitions.

5-1602. Deposit of securities in central depository.

5-1603. Fiduciaries—deposit of United States government and agency securities with a federal reserve bank.

**5-1601. Definitions.** For the purposes of 5-1602 and 5-1603, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Fiduciary" means a trustee under any trust, expressed, implied, resulting or constructive, executor, administrator, guardian, committee, conservator, curator, tutor, custodian, nominee, receiver, trustee in bankruptcy, assignee for the benefit of creditors, partner, agent, officer of any corporation, public or private, public officer, or any other person acting in a fiduciary capacity for any person, trust, or estate.

(2) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

**History:** En. 5-1601 by Sec. 3, Ch. 278, L. 1977.

#### Title of Act

An act to amend the Uniform Commercial Code with respect to the manner of holding and transferring investment se-

curities and to authorize the deposit of investment securities with clearing corporations and federal reserve banks under certain conditions; amending sections 87A-8-102, 87A-8-320, and 82A-401.1, R. C. M. 1947.

**5-1602. Deposit of securities in central depository.** (1) Notwithstanding any other provision of law, any fiduciary, as defined in 5-1601, holding securities in its fiduciary capacity, any bank or trust company holding securities as a custodian or managing agent, and any bank or trust company holding securities as custodian for a fiduciary is authorized to deposit or arrange for the deposit of the securities in a clearing corporation, as defined in 87A-8-102. When the securities are so deposited, certificates

representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of such clearing corporation with any other such securities deposited in such clearing corporation by any person regardless of the ownership of the securities, and certificates of small denomination may be merged into one or more certificates of larger denomination. The records of such fiduciary and the records of such bank or trust company acting as custodian, as managing agent, or as custodian for a fiduciary shall at all times show the name of the party for whose account the securities are deposited. Title to the securities may be transferred by bookkeeping entry on the books of the clearing corporation without physical delivery of certificates representing such securities. A bank or trust company so depositing securities pursuant to this section is subject to rules which in the case of state chartered institutions, the state banking board and, in the case of national banking associations, the comptroller of the currency, may from time to time adopt. A bank or trust company acting as custodian for a fiduciary shall, on demand of the fiduciary, certify in writing to the fiduciary the securities so deposited by the bank or trust company in the clearing corporation for the account of such fiduciary. A fiduciary shall, on demand by any party to a judicial proceeding for the settlement of the fiduciary's account or on demand by the attorney for such party, certify in writing to the party the securities deposited by the fiduciary in the clearing corporation for its account as such fiduciary.

(2) This section shall apply to any fiduciary holding securities in its fiduciary capacity and to any bank or trust company holding securities as a custodian, managing agent, or custodian for a fiduciary acting on the effective date of this section or who thereafter may act regardless of the date of the agreement, instrument, or court order by which it is appointed and regardless of whether or not such fiduciary, custodian, managing agent, or custodian for a fiduciary owns capital stock of such clearing corporation.

History: En. 5-1602 by Sec. 4, Ch. 278,  
L. 1977.

**5-1603. Fiduciaries—deposit of United States government and agency securities with a federal reserve bank.** (1) Notwithstanding any other provision of law, any bank or trust company when acting as fiduciary as defined in 5-1601, and any bank or trust company when holding securities as custodian for a fiduciary is authorized to deposit or arrange for the deposit with the federal reserve bank in its district of any securities the principal and interest of which the United States or any department, agency, or instrumentality thereof has agreed to pay or has guaranteed payment, to be credited to one or more accounts on the books of the federal reserve bank in the name of the bank or trust company, to be designated fiduciary or safekeeping accounts, to which accounts other similar securities may be credited. A bank or trust company so depositing securities with a federal reserve bank shall be subject to such rules with respect to the making and maintenance of such deposit as, in the case of state chartered institutions, the state banking board and, in the case of national banking associations, the comptroller of the currency may from time to time adopt.



The records of the bank or trust company shall at all times show the ownership of the securities held in such account. Ownership of and other interests in the securities credited to such account may be transferred by entries on the books of the federal reserve bank without physical delivery of any securities. A bank or trust company acting as custodian for a fiduciary shall, on demand of the fiduciary, certify in writing to the fiduciary the securities deposited by the bank or trust company with the federal reserve bank for the account of such fiduciary. A fiduciary shall, on demand by any party to its accounting or on demand by the attorney for the party, certify in writing to the party the securities deposited by the fiduciary with the federal reserve bank for its account as such fiduciary.

(2) This section shall apply to all fiduciaries and custodians for fiduciaries acting on the effective date of this section or who thereafter may act regardless of the date of the instrument or court order by which they are appointed.

**History:** En. 5-1603 by Sec. 5, Ch. 278, L. 1977.

#### CHAPTER 17—ELECTRONIC FUNDS TRANSFER ACT

##### Section

- 5-1701. Short title.
- 5-1702. Findings and purpose.
- 5-1703. Definitions.
- 5-1704. Satellite terminals—permitted uses.
- 5-1705. Authorization for certain satellite terminals required.
- 5-1706. Consumer information.
- 5-1707. Institutional access requirements.
- 5-1708. Geographical restrictions on certain satellite terminals.
- 5-1709. Protection of privacy.
- 5-1710. Unauthorized disclosure of electronic funds transfer records.
- 5-1711. Records of electronic funds transfers.
- 5-1712. Verification of statement—procedure for discrepancies.
- 5-1713. Unauthorized transactions—liability.
- 5-1714. Automatic teller machines—additional standards.
- 5-1715. Point-of-sale terminals—additional standards.
- 5-1716. Personal identification number—restrictions.
- 5-1717. Advertising—restrictions.
- 5-1718. Standard format code.
- 5-1719. Conventional checking option preserved.
- 5-1720. Rule-making authority delegated.
- 5-1721. Enforcement.

**5-1701. Short title.** This act shall be known and may be cited as the "Montana Electronic Funds Transfer Act".

**History:** En. 5-1701 by Sec. 1, Ch. 503, L. 1977. banking facilities and electronic transfers of funds by banks, savings and loan associations, and credit unions; amending section 5-1028, R. C. M. 1947; and providing

**Title of Act.** An act authorizing the use of electronic an effective date.

**5-1702. Findings and purpose.** (1) The legislature has determined that development of electronic funds transfer systems is a technology which promises convenience and efficiency for all types of financial depository institutions and their customers. The legislature further finds that this technology threatens to proliferate rapidly; that there presently exists no

adequate governmental regulation, federal or state, to control orderly development of this technology to prevent market domination and monopolies, to provide parity for all financial depository institutions, to provide mandatory sharing of such systems, and to assure nondiscriminatory access to such systems at nondiscriminatory rates on the part of all who are involved in the use of this technology. This act shall apply to financial institutions chartered under the United States Code, to the extent permitted by such code.

(2) The legislature finds need to control location and structural placement of electronic terminals in order to:

- (a) assure access, protection, and convenience to the public using them;
- (b) assure that structural placement of automated teller machines are designed to provide maximum protection to the terminal and its contents from vandalism, tampering, and theft and, since such machines shall be unmanned, to locate them in a manner designed to permit maximum protection of the public using them;
- (c) prevent traffic congestion at vehicle parking lots and pedestrian concourses and sidewalks;
- (d) prevent vehicle backup onto public highways;
- (e) prevent undue interference with nearby businesses;
- (f) locate automated teller machines in places permitting maximum sharing of their use to all operators desiring to use them under conditions herein stated.

(3) The legislature further finds that in the present state of the technology there is substantial potential for error and misuse and that these systems, including various types of terminals, telecommunications between them and computer and switching equipment, or transport of electronically recorded materials from the terminals to such equipment, and the computers and switches themselves are subject to malfunction, vandalism, fraud, theft, and other abuses and accidents, all indicating the obvious need for the exercise of the police power of this state to protect its citizens and their property in the use of this technology. Location of terminals is an important factor in such protection.

(4) The legislature further finds that commercial banks, savings and loan associations, and credit unions, chartered by both federal and state governments, are in competition for deposits, share accounts, and loans and other financial business of the state's citizens; that each has the capability of utilizing electronic funds transfer systems; and that unless there is controlled use of these systems there will be strong potentials for destructive competition and market domination by some financial institutions over others, increasing the likelihood for misuse and error, duplication and waste, and resulting increased costs.

(5) To meet these needs, the legislature finds that state authority must provide for authorizing such systems; for speedy and fair remedies for losses resulting from malfunction, misuse, or error; and for penalties for violation of this act.

History: En. 5-1702 by Sec. 2, Ch. 503, L. 1977.

**5-1703. Definitions.** As used in this act, the following definitions shall apply unless the context otherwise requires:

(1) "Electronic funds transfer" means debiting or crediting a depositor's account or otherwise transacting any business in a financial institution by electronic impulse messages, authorized under this act, transmitted directly by wire or otherwise or stored on magnetic tape or equivalent technologies, or otherwise, and processing the adjustments without regular and customary direct human intervention. Nothing in this subsection prevents a financial institution from processing its bookkeeping entries through normal human intervention.

(2) "Financial institution" means a bank chartered under Title 5 of this code, a bank chartered under the National Banking Acts in Title 12 of the United States Code, a building and loan association chartered under Title 7 of this code, a savings and loan association chartered under the Home Owners' Loan Act in Title 12 of the United States Code, a credit union chartered under Title 14, chapter 6, of this code, or a credit union chartered under the Federal Credit Union Act in Title 12 of the United States Code. For purposes of this act only, a consumer loan company licensed under Title 47, chapter 2, shall be considered a financial institution.

(3) (a) "Satellite terminal" means any machine or device located off the premises of a financial institution which a financial institution or its customers may use to carry out electronic funds transfers.

(b) "Satellite terminal" includes:

(i) automated teller machine, which means a satellite terminal to make electronic funds transfers, located off the premises of financial institutions, operated by customers of financial institutions without assistance, activated by a unique identification device and personal identification number;

(ii) point-of-sale terminal, which means a satellite terminal located on the premises of a merchant, operated by a merchant or his employees solely to debit a customer's deposit or share account in a financial institution and solely to credit the merchant's account commensurately for transactions in goods or services. A point-of-sale terminal need not be activated by a unique personal identification device. A merchant has the option, provided that the necessary computer capability exists at a reasonable cost, of selling goods or services by point-of-sale terminals with the electronic fund transfer taking effect at the time of the transaction or at a stated time after the transaction.

(c) The definition of "satellite terminal" does not include, and nothing in this act may be construed to apply to:

(i) an automated teller machine located on the premises of a financial institution;

(ii) an automated clearinghouse or any equivalent system designed to transfer funds between financial institutions; or

(iii) a point-of-sale terminal which is utilized by a merchant in the merchant's business only and does not provide access to a financial institution.

(4) "Premises" means those locations where by applicable law financial institutions are authorized to maintain a principal place of business and



other offices for the conduct of their respective businesses; the term includes a detached drive-in or walk-up facility approved under 5-1028.

(5) "Personal identification number" means a combination of numerals or letters selected for a customer of a financial institution and used, in conjunction with a unique identification device, to initiate a request for an electronic funds transfer.

(6) "Customer", in relation to a financial institution, means a holder of a demand or time account or a membership share in the institution or a person who is a borrower or a mortgagor; in relation to a merchant, it means a purchaser of goods or services.

(7) "Merchant" means a natural person, corporation, partnership, or association engaged in buying and selling goods or services, except that a financial institution is not a merchant.

(8) "Department" means the department of business regulation.

(9) "Person" means an individual, partnership, corporation, association, or any other business organization.

(10) "Unique identification device" means a magnetic encoded plastic card or equivalent device containing a number unique to a customer with relation to a financial institution.

History: En. 5-1703 by Sec. 3, Ch. 503,  
L. 1977.

**5-1704. Satellite terminals—permitted uses.** Satellite terminals may be employed in the state only in the following capacities:

(1) as an automated teller machine to make electronic funds transfers as defined in this act, off the premises of a financial institution, operated by the customers of financial institutions without assistance;

(2) as a point-of-sale terminal, operated by a merchant or his employees solely to debit a customer's deposit or share account in a financial institution and solely to credit the merchant's account commensurately for transactions in goods or services.

History: En. 5-1704 by Sec. 4, Ch. 503,  
L. 1977.

**5-1705. Authorization for certain satellite terminals required.** (1) Subject to the limitation expressed in 5-1708 and to the other requirements of this act, a business entity owned by a financial institution or financial institutions may install and maintain satellite terminals located within or not more than 3 miles beyond the incorporated municipality where each participating institution maintains its office or, if the financial institution is located outside an incorporated municipality, then not more than 3 miles from its principal place of business, after first obtaining authorization from the department of business regulation pursuant to rules adopted by the department. Business organizations other than financial institutions may own satellite terminals, provided, however, that such organizations shall not engage in the business of a financial institution and that ownership and possession of such satellite terminals shall be regulated by the department

of business regulation and they shall not be used for any purpose other than is authorized in this act.

(2) A merchant may install and operate a point-of-sale terminal. A merchant may utilize a machine as a point-of-sale terminal, which machine performs functions in addition to electronic funds transfer if such other functions do not violate the provisions of this act.

History: En. 5-1705 by Sec. 5, Ch. 503,  
L. 1977.

**5-1706. Consumer information.** A financial institution or its affiliate engaging in electronic funds transfers with its customers shall, prior to authorizing a customer to make electronic funds transfers, provide the customer an itemized statement clearly setting forth, without limitation:

(1) the specific transactions which may be performed through satellite terminals;

(2) the charges, if any, for individual transactions engaged in through a satellite terminal;

(3) minimum balance requirements, if any;

(4) the liability of the various parties for unauthorized transactions made by electronic funds transfer, with special emphasis upon the liability when the customer makes his personal identification number readily available for discovery in connection with theft or loss of the unique identification device and upon the importance of immediate notification to the institution of such theft or loss;

(5) the legal status of receipts issued from a satellite terminal;

(6) the right of the customer to a description of transactions performed by satellite terminal on any periodic statement of account furnished the customer;

(7) the right of the customer to seek correction of any errors he believes have been made in his account by electronic funds transfer;

(8) instructions in maintaining customer records and reconciling balances and in the importance of retaining receipts of electronic funds transfers; and

(9) the economic significance of having no "float" time and no stop-payment authority.

(a) The customer shall then sign a statement acknowledging his acceptance of these terms and conditions and give the statement to the financial institution. A copy of the statement, countersigned by an officer of the financial institution, shall be provided the customer. In addition, the information set forth in subsection (4) of this section shall be specifically acknowledged by the customer. The customer shall verify his acknowledgment by signing his initials immediately adjacent to the information provided.

History: En. 5-1706 by Sec. 6, Ch. 503,  
L. 1977.

**5-1707. Institutional access requirements.** (1) A satellite terminal used by a financial institution must be made available, on a nondiscrimina-

tory basis, to all financial institutions or branches thereof located within the geographic area that may use each type of satellite terminal, as defined and outlined in 5-1708, and that may want to participate in using this satellite terminal. In addition, each customer authorized by any financial institution may use the satellite terminal, with the limitations on the transactions imposed and outlined in 5-1708. The charges required to be paid by any financial institution which utilizes the satellite terminal may not exceed a pro rata portion of the cost, determined in accordance with generally accepted accounting principles, and a reasonable return on the owner's equity. The costs for the use of an automated teller machine chargeable to a financial institution for a financial transaction may not exceed 125% of the average transaction cost for the use of automated teller machines in Montana. A financial institution may contract with a merchant for the operation of point-of-sale terminals. The contract shall specify the conditions upon which the merchant will make the point-of-sale terminal(s) available to customers of the financial institution and shall include terms covering connection charge, fees, format code and security provisions. A point-of-sale terminal shall be available for use by all financial institutions upon such contractual terms as may be commercially reasonable.

(2) A financial institution may invest in, acquire, or hold shares in a corporation engaged solely in operating and owning satellite terminals. A financial institution may utilize, establish, or own, either alone or with one or more financial institutions, satellite terminals and related communication equipment associated with electronic funds transfers. Other business organizations may also own satellite terminals and lease or otherwise permit financial institutions to use the satellite terminals, provided these other businesses comply with the provisions of this act and agree to come under the supervision of the department. Such other business organizations may not engage in the business of a financial institution.

History: En. 5-1707 by Sec. 7, Ch. 503,  
L. 1977.

**5-1708. Geographical restrictions on certain satellite terminals.** (1) If a financial institution is a bank, savings and loan association, or a credit union, it may engage in electronic funds transfers by means of an automated teller machine located within or not more than 3 miles beyond the municipality where its office is located or, if the financial institution is located outside any incorporated municipality, not more than 3 miles from its principal place of business.

(2) The department may authorize the operation of an automatic teller machine which a financial institution uses only if such institution complies with this act and regulations adopted by the department.

(3) No out-of-state financial institution may establish a satellite terminal within the state or lease through other businesses satellite terminals within Montana. An out-of-state financial institution may not engage in electronic funds transfers within the state, except that a customer of an out-of-state financial institution may debit his account in an out-of-state financial institution at an in-state satellite terminal to pay for merchandise



and services, provided the merchant credits an account in a financial institution whose principal place of business is located within the state.

(4) Point-of-sale terminals may be available to all customers authorized by in-state financial institutions for debiting accounts to pay for merchandise and services.

**History:** En. 5-1708 by Sec. 8, Ch. 503,  
L. 1977.

**5-1709. Protection of privacy.** (1) No information relating to any transaction by electronic funds transfer, or application therefor, between a financial institution and its customer or prospective customer may be disclosed by the financial institution to any person or government entity without consent of the customer or, if the customer refuses to so consent, under subpoena issued by a court of record.

(2) This section does not prevent:

(a) the examination of financial institutions by duly authorized regulatory authority or the transfer of information by a financial institution to a clearinghouse which administers transactions between financial institutions; or

(b) the access by a party to a transaction to information relating to a specific transaction.

**History:** En. 5-1709 by Sec. 9, Ch. 503,  
L. 1977.

**5-1710. Unauthorized disclosure of electronic funds transfer records.**

(1) A person commits the offense of unauthorized disclosure of electronic funds transfer records if he has lawful access to such records by virtue of office or employment and:

(a) permits another, who lacks lawful access to such records, to inspect, copy, or read such records; or

(b) transfers such records to another who lacks lawful access thereto.

(2) A person convicted of the offense of unauthorized disclosure of electronic funds transfer records shall be imprisoned in the state prison for any term not to exceed 1 year, be fined not more than \$5,000, or be punished by both such imprisonment and fine.

**History:** En. 5-1710 by Sec. 10, Ch. 503,  
L. 1977.

**5-1711. Records of electronic funds transfers.** (1) A satellite terminal shall be operated so as to produce a humanly readable record of any transaction and to provide a copy of this record to the person initiating the transaction as soon as the transaction is complete.

(2) The receipt provided to the person initiating an electronic funds transfer shall be admissible as evidence in any legal proceeding and constitutes prima facie proof of the transaction which it records.

(3) (a) A financial institution shall provide each of its customers utilizing electronic funds transfer services with a periodic account statement containing a brief description of all electronic funds transfers sufficient

to enable the customer to identify any transaction and relate the transaction to the receipt provided under subsection (1) of this section.

(b) When a periodic account statement includes both electronic funds transfers and other transactions, all electronic funds transfers shall be identified as such and be furnished in compliance with this subsection.

History: En. 5-1711 by Sec. 11, Ch. 503,  
L. 1977.

**5-1712. Verification of statement—procedure for discrepancies.** (1) If, upon receipt of a periodic statement of account, a customer of a financial institution believes the statement contains an error with respect to an electronic funds transfer, the customer shall notify the institution within 60 days after the day the institution delivered the statement. In this notification, the customer shall identify himself and the foundation of his belief regarding the error.

(2) Within 10 days after a customer has notified a financial institution of a possible error under subsection (1), the institution shall either:

(a) correct the account in question, giving the customer a description of the correction (if the correction is not in the exact amount of the alleged error, the description shall explain the difference); or

(b) after investigating the matter, give the customer an explanation of the reasons the institution believes the statement to be correct. If requested in writing by the customer, a written explanation, documented by the institution's record of the transaction in question, shall be furnished the customer.

(3) A financial institution receiving notice under subsection (1) may not close the account concerning which the dispute exists or restrict transactions in such account affecting the portion not in dispute, until it complies with subsection (2). A financial institution which has once complied with subsection (2) with respect to an alleged error is not required to respond under subsection (2) to repeated allegations of the same error.

History: En. 5-1712 by Sec. 12, Ch. 503,  
L. 1977.

**5-1713. Unauthorized transactions—liability.** (1) A customer whose account is debited by an electronic funds transfer without his authorization is not liable for the amount of such transaction, and the amount shall be recredited to his account as provided under 5-1712, unless:

(a) the financial institution has provided the customer a unique identification device for initiating electronic funds transfer requests and transactions are made as a result of the theft or loss of that device, in which case the customer is liable for the first \$50 of any consequent transactions made prior to the time the financial institution is notified of such loss or theft; or

(b) the financial institution has provided the customer a unique identification device for initiating, in conjunction with a personal identification number separate from the device, electronic funds transfer requests, and the customer attaches the personal identification number to the device by

writing or otherwise or in any way makes the number readily available for discovery in connection with the theft or loss of the device, and transactions are made as a result of the theft or loss of the device, in which case the customer is liable for one-half the value of all consequent transactions made until the financial institution is notified of such theft or loss.

(2) A customer who willingly gives his unique identification device and personal identification number to another is presumed to have authorized any electronic funds transfers requested by such other person.

(3) A merchant who makes electronic funds transfer services available on his premises is liable for the amount of an unauthorized electronic funds transfer requested from his premises only if:

(a) he or his agent is negligent in requiring a user of electronic funds transfer services to furnish adequate self-identification;

(b) he fails to retain a physical record of the transaction for 1 year following the transaction; or

(c) he breaches the warranty required by subsection (4) of this section.

(4) A merchant operating a point-of-sale terminal shall warrant to the financial institution that an order for an electronic funds transfer emanating from the terminal is part of a commercial transaction in which the customer receives goods or services of commensurate value.

(5) The liability for any unauthorized or erroneous electronic funds transfer which does not fall upon a customer or a merchant under this section falls upon the financial institution which carries out the transfer.

**History:** En. 5-1713 by Sec. 13, Ch. 503,  
L. 1977.

**5-1714. Automatic teller machines—additional standards.** Before the department authorizes an automatic teller machine, the owner must certify to the department that the machine complies with the provisions of this chapter and is:

(1) equipped with adequate security provisions;

(2) activated by a unique identification device;

(3) designed so as to produce the transaction record required by 5-1711(1).

**History:** En. 5-1714 by Sec. 14, Ch. 503,  
L. 1977.

**5-1715. Point-of-sale terminals—additional standards.** (1) Before the department approves a point-of-sale terminal, it must find that the merchant demonstrates on his application that:

(a) he will use acceptable procedures for customer self-identification;

(b) he will use a draft and receipt system, on which the customer's signature acknowledges receipt of the goods or services paid for by electronic funds transfer;

(c) he will institute a procedure whereby he keeps one copy of each such draft and receipt for 1 year following the date of transaction, he gives one copy to the customer in satisfaction of 5-1711(1), and he forwards



one copy to the customer's financial institution. The requirement of a copy to the financial institution may be waived by the department by rule if the point-of-sale terminal is activated by a customer's unique identification device.

(2) A financial institution involved in an electronic funds transfer initiated from a point-of-sale terminal may inspect the merchant's copy of the transaction record for any purpose consistent with the privacy provisions of 5-1709.

History: En. 5-1715 by Sec. 15, Ch. 503,  
L. 1977.

**5-1716. Personal identification number—restrictions.** (1) A financial institution may not assign a personal identification number to a customer which is identical to that customer's social security account number, driver's license number, or any other number assigned for other purposes to that customer.

(2) A satellite terminal may not be operated so as to print a customer's personal identification number on the humanly readable receipt furnished at the time of a transaction.

History: En. 5-1716 by Sec. 16, Ch. 503,  
L. 1977.

**5-1717. Advertising—restrictions.** Advertising on satellite terminals shall be restricted to a common symbol or to identification of each participating financial institution in characters of equal size and prominence. This section does not restrict the right of financial institutions to advertise electronic funds transfer services in other media.

History: En. 5-1717 by Sec. 17, Ch. 503,  
L. 1977.

**5-1718. Standard format code.** All satellite terminals in the state shall be operated by a standard format code compatible with that used in other states. If cards are used as unique identification devices, the department may, by rule, prescribe a standard size.

History: En. 5-1718 by Sec. 18, Ch. 503,  
L. 1977.

**5-1719. Conventional checking option preserved.** A financial institution may not require any customer to deal with or through it by means of electronic funds transfer in lieu of writing checks in the usual manner upon a conventional checking account and may not impose any extraordinary charge upon customers who choose to write checks in the usual manner upon a conventional checking account maintained at that financial institution. Nothing in this section prohibits a financial institution from charging a reasonable fee to cover the expenses of providing a checking account to a customer or from realizing a reasonable profit for providing that service.

History: En. 5-1719 by Sec. 19, Ch. 503,  
L. 1977.

**5-1720. Rule-making authority delegated.** The department may adopt, amend, or repeal rules reasonably necessary to implement this act and effectuate its purposes.

**History:** En. 5-1720 by Sec. 20, Ch. 503, L. 1977.

**5-1721. Enforcement.** (1) Upon petition of the department and opportunity for a hearing under the Montana Administrative Procedure Act, the department may revoke or suspend authorization to operate a satellite terminal or to participate in its operation on the grounds that the person holding such authority has violated a provision of this act or a rule validly adopted.

(2) The department may bring an action in district court to enjoin a person from operating or participating in the operation of a satellite terminal without authority.

**History:** En. 5-1721 by Sec. 21, Ch. 503, L. 1977.

#### **Separability Clause**

Section 23 of Ch. 503, Laws 1977 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this

act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

#### **Effective Date**

Section 24 of Ch. 503, Laws 1977 read "This act is effective on January 1, 1978."





## TITLE 6—BONDS AND UNDERTAKINGS

### Chapter

1. Official bonds of state officers, 6-106.
2. Official bonds of county officers, 6-205.
5. Public bidder's bond, 6-501.
6. Official bonds of city or town officers and employees, 6-603.

### CHAPTER 1—OFFICIAL BONDS OF STATE OFFICERS

#### Section

- 6-106. All officers and employees to be bonded—determination of amounts of bonds—competitive bids.

#### 6-105. Department of administration to purchase all bonds.

##### Compiler's Notes

Section 98, Ch. 326, Laws 1974, substituted "department of administration" in

this section for "state controller" and "controller."

**6-106. All officers and employees to be bonded—determination of amounts of bonds—competitive bids.** All state officers and employees shall be bonded. Before determining the amount for which a state officer or employee shall be bonded, the department of administration shall consult with the head of the institution or agency involved and the head of the agency responsible for the examination or postauditing of state agencies. The amount for which a state officer or employee shall be bonded shall be based on the amount of money or property handled and the opportunity for defalcation. All bonds shall be purchased by competitive bid.

**History:** En. Sec. 2, Ch. 177, L. 1965; amd. Sec. 1, Ch. 326, L. 1974.

##### Amendments

The 1974 amendment substituted "department of administration" in the second sentence for "controller"; and deleted be-

fore the last sentence a sentence reading "If a state officer or the head of an agency, board or department feels that the amount of the bond set by the controller is excessive or inadequate, he may appeal to the board of examiners, whose decision shall be final."

#### 6-107, 6-108.

##### Compiler's Notes

Section 98, Ch. 326, Laws 1974, substituted "department of administration" in

these sections for "state controller" and "controller."

### CHAPTER 2—OFFICIAL BONDS OF COUNTY OFFICERS

#### Section

- 6-205. Department of community affairs to determine adequacy of amount.

**6-205. Department of community affairs to determine adequacy of amount.** The amount for which a county officer or employer [employee] or group of officers or employees shall be bonded is subject to the supervision of the department of community affairs. If the department of community affairs determines that the amount of the bond is inadequate, it may require the board of county commissioners to purchase an adequate bond.

History: En. Sec. 3, Ch. 68, L. 1967; amd. Sec. 46, Ch. 348, L. 1974; amd. Sec. 7, Ch. 213, L. 1975.

#### Compiler's Notes

The compiler has inserted the bracketed word "employee" in the first sentence, to correct an apparent error.

#### Amendments

The 1974 amendment substituted "department of intergovernmental relations" for "state examiner" throughout; and made minor changes in phraseology.

The 1975 amendment substituted "department of community affairs" for "department of intergovernmental relations" throughout the section.

### CHAPTER 4—PUBLIC WORKS CONTRACTOR'S BOND

#### 6-401. (5668.41) Contractors performing public work, etc.

##### Action Against City

Materialman, supplier of contractor who had public works contract with city, could not hold city liable for materials and sup-

plies not paid for by contractor but used in performance of contract. *C. E. Mitchell & Sons v. Davis*, — M —, 511 P 2d 316.

#### 6-402. (5668.42) Notice to contractor of furnishing provender, etc.

##### Raising Lack of Notice as Defense

In action by materialman against general contractor for material supplied subcontractor, general contractor could not raise affirmative defense that statutory notice was not given for first time upon submitting proposed findings of fact and conclusions of law where materialman alleged that he had complied with all conditions precedent to bringing the suit and general contractor entered a general denial since general denial did not put notice

in issue. *Treasure State Industries, Inc. v. Leigland*, 151 M 288, 443 P 2d 22.

##### Waiver of Notice

In an action by materialman against general contractor for materials supplied subcontractor, general contractor waived right to notice from materialman where he knew from beginning that the materialman was supplying masonry materials to subcontractor for the job and consented thereto. *Treasure State Industries, Inc. v. Leigland*, 151 M 288, 443 P 2d 22.

### CHAPTER 5—PUBLIC BIDDER'S BOND

#### Section

6-501. Bids accompanied by covenant of indemnity—contents—bidder's security—money, checks or bonds—forfeiture.

**6-501. Bids accompanied by covenant of indemnity—contents—bidder's security—money, checks or bonds—forfeiture.** In all cases where (a) the state of Montana, or any department (including the department of administration, unless otherwise authorized by express provision of law), institution, board, commission, agency, authority or subordinate jurisdiction thereof, or (b) any county, or other political subdivision of this state, or (c) any municipal corporation or authorized subdivision thereof, or (d) school districts, irrigation districts, or other public authority organized under the laws of the state of Montana (any and all thereof being herein referred to as a "public authority" or "obligee") is authorized by law to solicit bids, tenders or proposals for public works, improvements or undertakings of any kind, or for the purchase of commodities, goods, or property, or for the procurement of technical or special services on a bid basis (exclusive of services on the basis of salaries or wages) or for the sale and purchase of bonds, debentures, notes or any other forms of indebtedness of any such public authority, the respective executive, administrative or other officers of and acting for such public authority shall require, as a

condition precedent to considering any such bids, as evidence of good faith on the part of the bidder, and as indemnity for the benefit of such public authority against the failure or refusal of any bidder to enter into any written contract that may be awarded upon and following acceptance of bid, or consummating any sale and purchase of any forms of indebtedness, that any bid shall contain a written covenant of indemnity conditioned as herein prescribed and that the bid shall be accompanied by bid security of the nature herein specified, for the performance of such covenant. The advertisement, request, or solicitation for bids or offers shall distinctly specify that all bidders, offerors, tenderers or contractors shall,

(a) In any case where bids are solicited other than for purchase of any forms of indebtedness, expressly covenant in any bid that if the bidder shall be awarded the contract the bidder will, within the time required, as stated in the advertisement or solicitation, enter into a formal contract and give a good and sufficient bond to secure the performance of the terms and conditions of the contract; otherwise, the bidder will pay unto the public authority the difference in money between the amount of the bid of the said bidder and the amount for which the public authority legally contracts with another party to perform the work or supply the property, commodities or services, as the case may be, if the latter amount be in excess of the former, but in no event shall the bidder's liability or the liability of the surety of such bidder, exceed the penal sum stated in the solicitation or advertisement for bids, which sum shall be represented by the money posted or stated in the security instrument or bid bond; or

(b) In any case where the bids are solicited for the purchase and sale of any forms of indebtedness of such public authority, expressly covenant that the money or bank instrument accompanying the bid, in the sum specified by the public authority, shall be kept and retained by the public authority as liquidated damages for failure to consummate the purchase of such forms of indebtedness as may be awarded on acceptance of bid, and in compliance with the terms thereof.

In no event shall the bidder's liability, or the liability of the maker of the security instrument, or the liability on the bid bond exceed the amount specified by the public authority in the solicitation or advertisement for bids, whether the amount shall be posted in money, or be stated as the amount payable in the security instrument, or as the maximum amount payable in the bid bond. The public authority shall distinctly specify in the solicitation or advertisement for bids the penal or other sum fixed by statute to be paid by any bidder failing or refusing as aforesaid, in any case where such sum or sums are fixed by statute for bid security; otherwise, it shall in all cases specify the sum, but in no case less than 10% of the bid price, which it may deem reasonably necessary to protect and indemnify the public authority against the failure or refusal of the bidder to enter into the contract, or consummate the purchase of indebtedness, as the case may be.

In all cases under category (a) the bidder, offeror, or tenderer shall accompany any bid with either (1) lawful moneys of the United States, or (2) with a cashier's check, certified check, bank money order, or bank



draft, in any case drawn and issued by a national banking association located in the state of Montana, or by any banking corporation incorporated under the laws of the state of Montana, or (3) a bid bond or bonds executed by a surety corporation authorized to do business in the state of Montana; and in all cases under category (b) the bidder shall accompany the bid with the security described in (1) or (2) above. The moneys or, in lieu of moneys, any of such bank instruments or bid bonds shall be payable directly to the public authority soliciting or advertising for bids.

If, in any instance, one or more bids be accepted, or if a sale of any form of indebtedness is ordered, or if a contract is awarded, any bidder whose bid is accepted and who shall thereafter refuse to enter into and execute the proposed contract, or carry out and consummate the purchase of any form of indebtedness, as stated in the covenant in the bid, and herein, shall absolutely forfeit such moneys or bank instruments to the public authority concerned, and become immediately liable on the bid bond but not in excess of the penal sum therein stated. The moneys or bank instruments or bid bonds, as the case may be, shall be returned to those bidders whose bids are not accepted. The advertisement, request or other solicitation for bids or offers shall distinctly specify that lawful moneys of the United States, or a cashier's check, certified check, bank money order, or bank draft, in any case drawn and issued by banks, as herein specified, payable as aforesaid, or bid bond in any case appropriate therefor, shall constitute compliance with the requirement for bid security. But nothing herein contained shall exclude or be construed to excuse compliance with any other requirements for bonds or other or further security after acceptance of bids or following award of contract, or excuse compliance with any requirements for performance bonds, at any time, as such requirements may be prescribed or authorized by the laws of the state of Montana.

**History:** En. Sec. 1, Ch. 174, L. 1951; amd. Sec. 101, Ch. 326, L. 1974; amd. Sec. 1, Ch. 193, L. 1977.

#### **Amendments**

The 1974 amendment substituted "de-

partment of administration" for "state purchasing department."

The 1977 amendment inserted "but in no case less than 10% of the bid price" near the middle of the second sentence of the second paragraph of subsection (b).

## **CHAPTER 6—OFFICIAL BONDS OF CITY OR TOWN OFFICERS AND EMPLOYEES**

### **Section**

6-603. Determination of adequacy of bond by department of community affairs.

**6-603. Determination of adequacy of bond by department of community affairs.** The amount for which a city or town officer or employee or group of officers or employees shall be bonded is subject to the supervision of the department of community affairs. If the department of community affairs determines that the amount of the bond is inadequate it may require the city or town council or commission to purchase an adequate bond.

**History:** En. Sec. 3, Ch. 67, L. 1967; amd. Sec. 47, Ch. 348, L. 1974; amd. Sec. 8, Ch. 213, L. 1975.

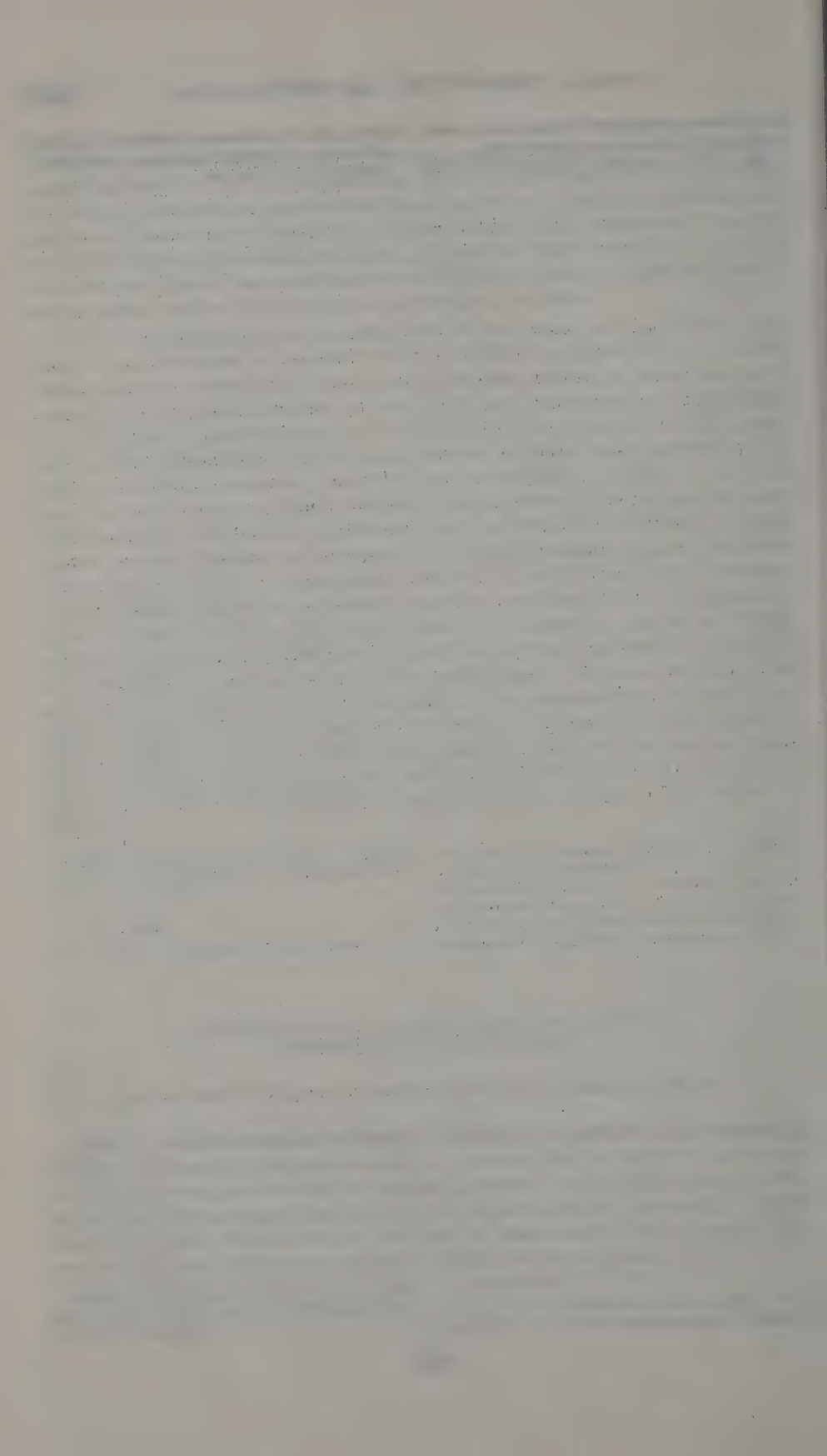
#### **Amendments**

The 1974 amendment substituted "department of intergovernmental relations"

for "state examiner" throughout; and made minor changes in phraseology.

partment of community affairs" for "department of intergovernmental relations" throughout the section.

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## TITLE 7—BUILDING AND LOAN ASSOCIATIONS

### Chapter

1. Laws regulating the operation of building and loan associations, 7-101, 7-102, 7-106, 7-108, 7-112, 7-113, 7-113.2, 7-113.3, 7-118, 7-119, 7-125 to 7-127, 7-130, 7-131, 7-136, 7-138, 7-139, 7-147, 7-149, 7-150, 7-156.

### CHAPTER 1—LAWS REGULATING THE OPERATION OF BUILDING AND LOAN ASSOCIATIONS

#### Section

- 7-101. Purpose—definition.
- 7-102. Articles of incorporation—contents.
- 7-106. Capital stock requirements—investigation—certificate of incorporation, how issued.
- 7-108. Department to approve contracts paying income to person other than association—penalty for not securing.
- 7-112. Proxies.
- 7-113. Powers and duties of building and loan associations.
- 7-113.2. Consolidation and transfer—branching prohibited.
- 7-113.3. Prospective application.
- 7-118. Bonds of officers, agents and employees.
- 7-119. Employment of agents—licenses and revocation thereof.
- 7-122. [Transferred.]
- 7-125. Duties of department.
- 7-126. Powers of department.
- 7-127. Reports of condition—contents—publication.
- 7-130. Application to other persons, corporations, associations, etc.
- 7-131. Foreign associations—requirements.
- 7-136. Conformity required.
- 7-138. Department report.
- 7-139. Obtaining property by fraud—false report—refusal to permit inspection of books.
- 7-147. Reports and examinations by department confidential.
- 7-149. Voluntary liquidation and settlement.
- 7-150. Insolvency or impairment of building and loan association—powers of department.
- 7-156. Conversion into federal savings and loan associations.

**7-101. (6355.1) Purpose—definition.** A corporation mutually operated for the purpose of encouraging home ownership and thrift among its members and making substantially all of its loans to them on real estate mortgage security, shall be known in this act as a building and loan association or a savings and loan association, and is under the supervision of the department of business regulation, which shall enforce all laws with respect to it. The members of a building and loan association are its shareholders, stockholders, borrowers or purchasers of real estate under contract. The associations have continual succession and shall be organized under the provisions of this chapter. When used in this chapter, "building and loan association" includes savings and loan associations organized under this act. "Department" means the department of business regulation provided for in Title 82A, chapter 4.

**History:** En. Sec. 1, Ch. 57, L. 1927; amd. Sec. 1, Ch. 187, L. 1945; amd. Sec. 1, Ch. 68, L. 1949; amd. Sec. 69, Ch. 431, L. 1975.

#### Amendments

The 1975 amendment substituted "department of business regulation" for "state examiner and ex officio superintendent of

banks" near the end of the first sentence; substituted "chapter" for "act" in the third and fourth sentences; added the last sentence; and made minor changes in phraseology.

**7-102. (6355.2) Articles of incorporation—contents.** Whenever any number of persons, not less than five, desire to incorporate a building and loan association, having for its object the conduct and operation of such an association as defined in this act, they shall prepare and file articles of incorporation to that effect in the manner specified in this act. Such articles shall be signed, sealed, and acknowledged in the form now provided by the statutes of this state for the conveyance of real estate and shall include the following:

(1) the name of the association, which may not be the same as or too closely resemble that in use by any existing corporation established under the laws of this state. The words building and loan association or savings and loan association shall form a part of the name, and a corporation not organized under this act may not use a name embodying that combination of words, provided that the associations existing as of May 1, 1927, may continue their present names.

(2) the principal office or place of business of the association which shall be within this state;

(3) the amount of its capital stock and the number of shares into which the same shall be divided. The capital stock shall be divided into shares having a par value of \$100.

(4) a provision that such association is organized under this act for the purposes herein expressed;

(5) the names and residences of the persons who subscribed and acknowledged the declaration, a majority of whom shall be citizens of this state and shall thereafter be called incorporators.

**History:** En. Sec. 2, Ch. 57, L. 1927; amd. Sec. 1, Ch. 67, L. 1949; amd. Sec. 28, Ch. 71, L. 1977.

ing as of May 1, 1927" for "now existing" near the end of the second sentence of subsection (1); and made minor changes in phraseology, punctuation and style.

#### **Amendments**

The 1977 amendment substituted "exist-

### **7-104, 7-105.**

#### **Compiler's Notes**

stituted "department" in these sections for Section 170, Ch. 431, Laws 1975, sub- "superintendent of banks."

**7-106. (6355.6) Capital stock requirements—investigation—certificate of incorporation, how issued.** The capital stock named in the articles of incorporation refers to the authorized capital stock. The organization may be completed and business commenced when five per cent (5%) of the capital stock is subscribed and not less than twenty-five hundred dollars (\$2,500), paid in, in cash. That amount must thereafter be maintained. When the articles of incorporation are in proper form and regularly executed and the bylaws have been duly approved as required in section 7-105 and it appears to the satisfaction of the department that five per cent (5%) of the authorized capital has actually been paid in cash upon the sub-

scription of shares, the department shall then ascertain from the best sources of information at its command the responsibility, character and general fitness of the incorporators. The department shall also determine whether there is a reasonable need for the existence of the association, and whether the public convenience and advantage will be promoted by its existence. If the department is not satisfied with the result of its investigations of the matters specified in this section, it shall, within sixty (60) days after the articles of incorporation and bylaws have been presented to it, refuse to issue the certificate described in this section. If it is satisfied with the result of its investigations, it shall within sixty (60) days after the articles of incorporation and bylaws have been presented to it, issue under its official seal, a certificate reciting in substance the filing in its office of the articles of incorporation and bylaws. The certificate shall also state that the articles and bylaws conform to all the requirements of this act; that the department has approved them and that it believes that the incorporators are fit and proper persons to conduct the business of a building and loan association as defined in this act and the bylaws and that there is a reasonable need for the existence of the building and loan association, and that the public convenience and advantage will be promoted thereby. The certificate shall be made in quadruplicate and attached to each copy of the articles of incorporation, one (1) of which shall be retained by the department, the other three (3) shall be returned to the incorporators who shall immediately file one (1) copy with the secretary of state and one (1) with the clerk and recorder of the county in which the principal place of business of the association is located. The other copy shall be retained by the association. Immediately upon the receipt of the certified copy, the secretary of state shall issue a certificate of incorporation, at which time the incorporation of the association is complete.

**History:** En. Sec. 6, Ch. 57, L. 1927; amd. Sec. 70, Ch. 431, L. 1975.

**Amendments**

The 1975 amendment substituted “de-

partment” for “superintendent of banks” throughout the section; and made numerous minor changes in phraseology, punctuation and style.

**7-107. (6355.7) Directors—duties.**

**Compiler's Notes**

Section 170, Ch. 431, Laws 1975, sub-

stituted “department” in this section for “superintendent of banks.”

**7-108. (6355.8) Department to approve contracts paying income to person other than association—penalty for not securing.** No fiscal agency or promotion contract or any other contract or arrangement whereby the membership fee, or any other income properly payable to the association, or any part thereof, is payable to an agent or other contracting party or otherwise than to the association, or whereby any part of the business of the association or the management or conduct of its affairs or the expense of them is contracted to another, may be entered into or allowed until it has been submitted to the department and by it approved in writing. That contract may not be extended without the department's approval. The contract, or the extension of the contract, not first approved is void. A person operating under the contract or extension, not first approved, or



taking or receiving income properly payable to the association without approval, is guilty of a misdemeanor.

**History:** En. Sec. 1, Ch. 154, L. 1931; amd. Sec. 71, Ch. 431, L. 1975.

partment" for "superintendent of banks" throughout the section; and made minor changes in phraseology and punctuation.

#### **Amendments**

The 1975 amendment substituted "de-

**7-112. (6355.12) Proxies.** At least once every year the board of directors of every building and loan association shall, by resolution, cause the secretary of such association to mail to every stockholder of such association a blank form of proxy, and the stockholder may withdraw his former proxy and substitute another in its stead. Every proxy shall continue in force and be binding upon the stockholder until such proxy is revoked or another substituted.

**History:** En. Sec. 11, Ch. 57, L. 1927; amd. Sec. 29, Ch. 71, L. 1977.

withdraw" for "shall have the right and privilege of withdrawing" near the end of the first sentence; and made minor changes in phraseology.

#### **Amendments**

The 1977 amendment substituted "may

**7-113. (6355.13) Powers and duties of building and loan associations.** A building and loan association may:

- (1) Have continual succession, by its corporate name;
- (2) Sue and be sued, in any court;
- (3) Make and use a common seal and alter it at pleasure;
- (4) Appoint those officers or agents the business of the corporation requires, and pay them suitable compensation;
- (5) Enter into obligations or contracts essential to the transaction of its ordinary affairs, or for the purposes of the corporation.
- (6) Issue stock to members on the terms and conditions the constitution and bylaws provide, but an association may not issue preferred stock.
- (7) Assess and collect from members dues on stock and interest on loans at the times and in the amount provided for in the constitution and bylaws. The combined total of the amounts paid to an association for interest, commission, bonus, discount and other similar charges, less a proper deduction for all dividends, refunds, and cash credits of all kinds, shall not create an actual net cost to the borrower in excess of the maximum lawful contract rate of interest in this state. Interest not exceeding the maximum lawful contract rate may also be charged on unpaid interest, principal payments or both, from the time those payments are due. Interest, not exceeding the lawful contract rate, may also be charged and collected on delinquent stock payments when those unpaid payments are credited with dividends. The interest shall in no event be at a rate exceeding the rate per cent of the dividend declared on the same unpaid stock payments. An association may not charge or collect from a stockholder, member or borrower, any fines, premiums, or penalties of any kind; except that a late payment penalty not to exceed five dollars (\$5) may be charged for payments more than fifteen (15) days late. An officer, agent or employee of an association collecting or attempting to collect a penalty, fine or premium of

any kind except the late payment penalty or interest at a rate higher than provided in the note or other evidence of debt or in this act, is guilty of a misdemeanor.

(8) Permit members to withdraw all or part of their stock credits at the times and upon the terms, as the constitution and bylaws may provide. No charge or fee, except as provided in this section, may be made against a member who withdraws his stock, after having given thirty (30) days' notice of the withdrawal. No fine of any description may be made upon the par value of that stock or upon the declared dividends because of the withdrawal. A member who withdraws his stock or whose stock is matured, is entitled to receive all dues paid in and all dividends declared less interest, if any, as provided in subsection (7), less a reasonable membership fee not exceeding two (2) per cent of the par value of each share of stock and less a prorata share of all losses, if any, which have occurred. No other fine or assessments may be made against the stock. Applications for withdrawal shall be registered on the books of the association in the order received and one-half of all cash collections, not required to meet outstanding contracts, must be used for the payment of the matured stock and of the withdrawals in the order registered. The other half of those collections each month may be used for the payment of withdrawals other than in the order registered, but no member may receive more than one hundred dollars (\$100) in any one month other than by payment of an application for withdrawal in the order registered. The term "outstanding contracts" includes the costs and expenses of operation, completion of loans, payment of taxes and assessments and necessary remodeling and repairs on properties owned by or mortgaged to the association, repayment of all borrowed money and all fixed charges.

(9) Cancel shares of stock upon which all credits have been withdrawn, or upon which loans have been canceled or stock upon which no payments have been made for a period of six (6) months, by returning to the stockholders all credits, if any, and reissue the shares as new stock.

(10) Issue stock to minors and permit it to be withdrawn as other stock, and the receipt by the minor is a valid acquittance if his rights have been fully secured to him.

(11) Acquire, hold, encumber and convey that real estate and personal property necessary for the transaction of its business, or necessary to enforce or protect its securities. Not over ten (10) per cent of the assets of an association may be invested in home office buildings, furniture, and fixtures. Other real property acquired in any manner or for any purpose may not be held for more than five (5) years, except by permission of the department.

(12) Borrow money, only when necessary not exceeding twenty (20) per cent of its assets except when borrowing from the federal home loan bank as provided in this section, and issue its promissory note for the loan. The assets and securities of an association may not be pledged to secure its borrowed money or for any other purpose, without the consent of the department. However, if the department determines that it is advisable to pledge assets in order that funds may be secured it may authorize the



pledging. The margin of security pledged may not exceed twenty-five (25) per cent of the funds so borrowed except when funds are borrowed from the federal home loan bank. An association may borrow money from the federal home loan bank upon the terms required by the federal home loan bank, and may execute the promissory note of the corporation for the loan, and may pledge any of the assets of the corporation to secure the repayment of the loan, with interest, in accordance with the Federal Home Loan Bank Act, and the rules adopted under it.

(13) Make loans to members on the security of the shares of the association, and also on their notes secured by first mortgages on improved real estate, including suburban homes, but not on farm lands or mining property, for not to exceed seventy-five (75) per cent of the actual value of the real estate, and upon the terms and conditions which may be provided in the constitution and bylaws. However, where the promissory note, or other written evidence of the loan made by a building and loan association requires the payment of the loan, or total aggregate sum of principal and interest in periodic installments, the promissory note, or other written evidence of debt shall specifically state the actual interest rate charged the borrower upon the unpaid balance of the principal amount at each periodic payment. When the note or other evidence of debt does not require the payment of the loan in periodic installments, the note or other evidence of debt shall specifically state the actual rate of interest charged the borrower.

(14) Cancel those loans and release the securities on those terms the board of directors may provide. A borrower may have his loan canceled by paying all the interest up to date of cancellation and the sum actually borrowed, less payments on principal, dues paid in, and the dividends credited.

(15) Invest the money of the association in:

(a) The bonds and securities of the United States, bonds and other obligations guaranteed as to interest and principal by the United States, and the stocks, bonds, debentures, and other securities and obligations of any federal home loan bank created under the laws of the United States;

(b) The bonds and warrants of any state and of any county, city, or school district of the state of Montana;

(c) The obligations of the federal savings and loan insurance corporation lawfully issued pursuant to Title IV of the National Housing Act;

(d) Improved real estate which has been sold under contract, including suburban homes, but not including farm lands or mining property. However, the total amount remaining so invested, excluding real estate otherwise acquired, shall at no time exceed fifteen per cent (15%) of its assets. The amount so invested may not exceed eighty-five per cent (85%) of the price stipulated in the contract of sale or eighty-five per cent (85%) of the value of the property so purchased, whichever is the lesser;

(e) Not to exceed ten per cent (10%) of the association assets in other bonds and securities.

(16) Loan money to other building and loan associations;



(17) Make a semiannual distribution of all the earnings after payment of expenses and setting aside a sum for the contingent funds as provided in this act;

(18) Amend its articles of incorporation by changing the name, place of business, the number of directors, and increase or decrease the capital stock and provide for its own continual succession by a majority vote of its directors. However, those amendments are of no effect until approved by the department;

(19) Dissolve the corporation in accordance with the provisions of this chapter;

(20) Provide by constitution and bylaws, adopted or amended, by its board of directors for the proper exercise of the powers granted in this section and the conduct and management of its affairs;

(21) Exercise those other powers which are necessary and proper to enable the corporation to carry out the purpose of its organization.

**History:** En. Sec. 12, Ch. 57, L. 1927; amd. Sec. 1, Ch. 163, L. 1929; amd. Sec. 1, Ch. 11, L. 1933; amd. Sec. 1, Ch. 80, L. 1939; amd. Sec. 1, Ch. 164, L. 1943; amd. Sec. 1, Ch. 337, L. 1975; amd. Sec. 72, Ch. 431, L. 1975.

(13) (quoted below) which was deleted by Ch. 431, Laws of 1975; and made various minor changes in phraseology throughout the section.

Chapter 431, Laws of 1975, substituted "department" for "superintendent of banks" throughout the section; deleted a second paragraph in subsection (13) which read: "Provided, however, that in all notes and mortgages now in force which do not specify the actual rate of interest charged the borrower upon the unpaid balance of the principal at each periodic payment, all payments made on the said notes must be distributed by crediting the same, first, upon the interest on the unpaid balance of the loan at the rate actually earned under the terms of the notes and mortgages, and the remainder on the principal of the loan, and no charges or deductions from any of said periodic payments shall be permitted by any such association not specifically provided for in said promissory note or other evidence of such loan"; deleted a former subsection (22) relating to the consolidation of two or more associations [now sec. 7-113.2]; and made minor changes in phraseology, punctuation and style throughout the section.

#### Compiler's Notes

This section was amended twice in 1975, once by Ch. 337 and once by Ch. 431. Neither amendatory act mentioned the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

#### Amendments

Chapter 337, Laws of 1975, substituted "unpaid interest, principal payments or both" for "unpaid interest payments" near the middle of subsection (7); added the exceptions relating to late payment penalties in the last and next to last sentences of subsection (7); substituted "or" for "and" before "in this act" in the last sentence of subsection (7); added "except the late payment penalty and the additional interest charge on late payments" at the end of the second paragraph of subsection

stituted "department" in this section for "state superintendent of banks."

### 7-113.1. Loans and investments.

#### Compiler's Notes

Section 170, Ch. 431, Laws 1975, sub-

**7-113.2. Consolidation and transfer—branching prohibited.** (1) Only building and loan associations organized and chartered under the laws of the state of Montana may, with the approval of the department, consolidate and become incorporated in one body, with or without any dissolution or division of the funds or property of any of them. Any association may transfer its engagements, funds, and property to any other association upon terms agreed upon by a majority vote of the respective board of

directors, and ratified by a two-thirds vote of the shares present and voting in person or by proxy at a special meeting or meetings of the stockholders of the respective associations convened for that purpose, upon notice given as provided by law, the notice to state the object of the meeting. A transfer may not prejudice any right of any creditor of the association.

(2) Branching by merger or branching otherwise between a building and loan association organized and chartered under the laws of Montana and a building and loan association organized and chartered under the laws of any other state is prohibited. Branching de novo in Montana by a foreign-chartered building and loan association is prohibited.

**History:** En. 7-113.2 by Sec. 73, Ch. 431, L. 1975; amd. Sec. 1, Ch. 363, L. 1977.

#### Compiler's Notes

This section is former subdivision (22) of section 7-113, except for the substitution of "department" for "superintendent of banks" and some minor changes in phraseology. For history of the former subdivision, see note following sec. 7-113 in the parent volume.

#### Amendments

The 1977 amendment inserted the subsection (1) designation; substituted "Only building and loan associations organized and chartered under the laws of the state of Montana" at the beginning of subsection (1) for "Two (2) or more building and loan associations"; added subsection (2); and made minor changes in phraseology and punctuation.

#### Approval of Merger

Approval of proposed merger of savings

and loan institutions by Montana director of business regulation prior to approval of merger by federal home loan bank board does not render the decision of the director a nonjusticiable controversy. *Gate City Savings & Loan Assn. v. Pitts*, — M —, 533 P 2d 1083.

#### Approval of Shareholders

There is nothing in this section to indicate that the approval of the shareholders must precede the consent of the director of business regulation, nor alternatively, that the director's consent must precede the shareholders' vote. *Gate City Savings & Loan Assn. v. Pitts*, — M —, 533 P 2d 1083.

#### Merger with Out-of-State Association

A North Dakota chartered savings and loan association may merge with two Montana chartered savings and loan associations and maintain their separate existing facilities. *Gate City Savings & Loan Assn. v. Pitts*, — M —, 533 P 2d 1083.

**7-113.3. Prospective application.** Insofar as 7-113.2 limits or reduces the rights, powers or privileges of building and loan associations previously granted by law, it shall apply only to proposed consolidations or mergers of associations which are initiated by action taken by their board of directors and shareholders subsequent to the effective date of this act.

**History:** En. 7-113.3 by Sec. 2, Ch. 363, L. 1977.

113.2, R. C. M. 1947; and providing an immediate effective date.

#### Title of Act

An act to authorize only Montana-chartered building and loan associations to consolidate or merge and to prohibit branching de novo; amending section 7-

#### Effective Date

Section 3 of Ch. 363, Laws 1977 provided the act should be effective on its passage and approval. Approved April 14, 1977.

**7-118. (6355.17) Bonds of officers, agents and employees.** The board of directors of every building and loan association shall require that all officers, agents, and employees of building and loan associations whose duty includes the handling of moneys, notes, bonds, credits, and cash items, and whose duties include bookkeeping or the making of entries in relation to the business of the building and loan association and its customers, be bonded. The board of directors shall by an order entered upon the minute books of the board designate all the officers, agents, and



employees to be so bonded and the amount of bonds to be given by each. The action as to the personnel and amount and the surety company or sureties shall be subject to approval by the department. The bonds shall be in a form which shall be provided and approved by the department, and the bonds shall be approved by the president of the building and loan association and his action reported to the board of directors. All bonds required by this section shall be kept in the custody of the building and loan association subject to inspection by the department. As far as possible, a bond may not be placed in the custody of the officer, agent, or employee for whom it is given.

**History:** En. Sec. 16, Ch. 57, L. 1927; amd. Sec. 1, Ch. 5, L. 1933; amd. Sec. 74, Ch. 431, L. 1975.

ences to the department for references to the state superintendent of banks or his agents throughout the section; and made minor changes in phraseology and punctuation.

#### **Amendments**

The 1975 amendment substituted refer-

**7-119. (6355.18) Employment of agents — licenses and revocation thereof.** (1) It is unlawful for a building and loan association doing business in this state to employ an agent for the purpose of soliciting loans or the sale of stock in that association, unless he is first licensed by the department. An agent representing an association, foreign or domestic, doing business in this state may not solicit loans or the sale of stock of any association unless he is first licensed by the department.

(2) A license may not be issued to an applicant for an agent's license until the applicant has first filed with the department a written request from the building and loan association desiring to employ him as agent and has filed an application upon a form prescribed and furnished by the department. The application must show the applicant's name, business and residence address, community or district in which he wishes to act as agent, the name of the company to be represented, his occupation for the last twelve (12) months and other information the department may require. If the department is satisfied that the applicant is a fit and proper person to engage in the solicitation of loans or the sale of stock it shall issue the license. The department upon ten (10) days' notice to an agent, and after a hearing, may revoke the license of an agent upon the following grounds:

- (a) Misrepresentation;
- (b) Conviction in any court for violation of the criminal statutes;
- (c) Evidence sufficient to convince the department that the agent is not a fit and proper person to sell building and loan association stock;
- (3) The department shall revoke the license of an agent upon the request of the association employing the agent.

(4) Each license provided for in this section expires on December 31 of each year, and for issuance or renewal the department shall require a fee of two dollars (\$2).

**History:** En. Sec. 17, Ch. 57, L. 1927; amd. Sec. 75, Ch. 431, L. 1975.

section designations (1), (2) and (4); redesignated former subdivision (4) as subsection (3); redesignated former subdivisions (1) to (3) as subdivisions (2)(a) to (c); substituted "department" for "su-

#### **Amendments**

The 1975 amendment inserted the sub-



perintendent of banks" throughout the section; substituted "Evidence sufficient to convince the department" for "When satisfied" in subdivision (2)(c); substituted

"this section" in subsection (4) for "this act"; and made minor changes in punctuation and phraseology.

## 7-122. [Transferred.]

### Compiler's Notes

Section 76, Ch. 431, Laws of 1975 renumbered this section as sec. 84-7601.

## 7-124. (6355.23) Form of statement—where filed.

### Compiler's Notes

Section 170, Ch. 431, Laws of 1975, sub-

stituted "department" in this section for "superintendent of banks."

**7-125. (6355.24) Duties of department.** The department shall examine all building and loan associations doing business in this state at least once a year. Also, when the holders of ten per cent (10%) of the subscribed stock of an association file a written application with the department, requesting it to make a special examination of an association, it shall make the examination immediately. The expense of the examiner making the examination shall be paid by the association examined, and the examiner's finding shall be available to the petitioners and the board of directors of the association notwithstanding any provisions to the contrary contained in this act.

**History:** En. Sec. 23, Ch. 57, L. 1927; amd. Sec. 1, Ch. 81, L. 1955; amd. Sec. 77, Ch. 431, L. 1975.

### Amendments

The 1975 amendment substituted "department" for "superintendent of banks"; and made minor changes in phraseology.

**7-126. (6355.25) Powers of department.** The department may prescribe and supervise a uniform system of reports, and accounting for all associations. The department shall have access to and may compel the production of all books, papers, securities and moneys of any association under examination. It may administer oaths to and examine the officers and agents of the association and its affairs.

**History:** En. Sec. 24, Ch. 57, L. 1927; amd. Sec. 78, Ch. 431, L. 1975.

### Amendments

The 1975 amendment substituted "department" for "superintendent of banks"; and made minor changes in phraseology.

**7-127. (6355.26) Reports of condition — contents — publication.** A building and loan association shall make to the department a report of condition when requested to do so by the department, according to the form which may be prescribed by the department. The report shall be verified by the oath or affirmation of the president, vice-president, or secretary of the association, and attested by the signature of at least two (2) of the directors. The report shall exhibit in detail and under appropriate heads, the resources and liabilities of the association at the close of business on any past day specified; and shall be transmitted to the department within five (5) days after the receipt of a request or requisition for it from the department and in a form which may be required by the department. It

shall be published as soon as possible in a newspaper in the place where the association is established, or if there is no newspaper published in the place, then in one published nearest thereto in the same county, at the expense of the association. Proof of publication shall be furnished at the times and in the manner which may be required by the department.

**History:** En. Sec. 25, Ch. 57, L. 1927; amd. Sec. 79, Ch. 431, L. 1975.

partment" for "superintendent of banks"; and made minor changes in phraseology and style.

#### Amendments

The 1975 amendment substituted "de-

### 7-128, 7-129.

#### Compiler's Notes

Section 170, Ch. 431, Laws 1975, sub-

stituted "department" in these sections for "superintendent of banks."

**7-130. (6355.29) Application to other persons, corporations, associations, etc.** (1) The provisions of this chapter shall apply to and be enforceable against all corporations, persons, firms, partnerships, associations, trustees, or combinations of persons, whether foreign or domestic and whether citizens of this state or otherwise, that transact, or attempt to transact, a building and loan business or a business of like kind or character or where, by its or their charter, constitution, bylaws or by a declaration of trust or other device or by a contract or agreement, the members or customers are required to pay regular installments to a common fund or series from which loans are made to said members, customers, or to others for the purpose of building homes or buildings, purchasing building sites, paying off liens or debts against real estate, or for other purposes within the boundaries of this state.

(2) The name association when used in this chapter shall be deemed to include any of the above-named.

(3) This chapter does not apply to foreign associations with relation to the purchasing of or participating in loans secured by mortgages, trust indentures, or other security interests in real or personal property if there is no activity conducted by the out-of-state lender in Montana with respect to the loan except periodic inspection of the security.

**History:** En. Sec. 28, Ch. 57, L. 1927; amd. Sec. 1, Ch. 66, L. 1977.

added subsection (3); and made minor changes in phraseology and punctuation.

#### Amendments

The 1977 amendment inserted subsection designations (1) and (2); deleted "fund or series" before "loans are made to said members" near the end of subsection (1);

#### Foreign Associations

A North Dakota chartered savings and loan association would be treated the same as a domestic association for merger purposes. *Gate City Savings & Loan Assn. v. Pitts*, — M —, 533 P 2d 1083.

**7-131. (6355.30) Foreign associations—requirements.** (1) An association as defined in section 7-130 organized under the laws of any other state, of the United States, or of any foreign government shall, before doing business in this state, file with the secretary of state and the department, a duly authenticated copy of their charter, articles of incorporation, or articles of agreement, and also a statement, verified by oath of the

president and secretary of the corporation or managing officials if other than a corporation, and duly verified, showing:

(a) The name of the association and the location of its principal office or place of business outside this state; and the location of the place of business or principal office in this state;

(b) The names and residences of the officers, trustees or directors;

(c) The amount of capital stock;

(d) The amount of capital invested in the state of Montana.

(2) The association shall also file, at the same time and in the same offices, a certificate, signed by its president, vice-president, or other acting head, and by its secretary if there is one, certifying that the association has consented to all the license laws and other laws of this state relative to foreign associations and has consented to be sued in the courts of this state, upon all causes of action arising against it in this state, and that service of process may be made upon a citizen of this state, whose name and place of residence shall be designated in the certificate. Service of process on that agent is valid service on the association.

History: En. Sec. 29, Ch. 57, L. 1927;  
amd. Sec. 80, Ch. 431, L. 1975.

#### Amendments

The 1975 amendment inserted the subsection designations; redesignated former subdivisions 1 through 4 as subdivisions (1)(a) through (1)(d); substituted "department" for "superintendent of banks" in subsection (1); and made minor changes in phraseology.

#### Joinder of Merging Associations

Montana savings and loan associations should have joined in the application of North Dakota savings and loan association for merger of the three associations. *Gate City Savings & Loan Assn. v. Pitts*, — M —, 533 P 2d 1083.

**7-136. (6355.35) Conformity required.** The powers, rights, duties, privileges, and obligations of every association organized and doing business in a form similar to that authorized by this act, shall be governed, controlled, construed, extended, limited, and determined by the provisions of this act, to the same extent and effect as if the association had been organized and incorporated under or pursuant to its provisions, and the articles of incorporation, bylaws and rules of each heretofore made or existing are hereby modified, altered and amended to conform with the provisions of this act and the same are declared void where the articles of incorporation, bylaws or rules are inconsistent with its provisions; except that the obligations of any existing association, whether between the association and its shareholders or any one of them, or any other person or persons, or any valid contract between the shareholders of the association existing at the time this act takes effect, shall not be in any way impaired by the provisions of this act; and with these exceptions every building and loan association shall possess the powers, rights, duties and privileges, and be subject to the obligations, restrictions and liabilities conferred and imposed by this act, notwithstanding anything to the contrary in its articles of incorporation, bylaws or rules. All obligations to the association heretofore contracted shall be enforceable by it and in its name and demands, claims and rights of action against the association shall be enforced against it as fully and completely as they might have



been enforced before. Except as above set forth, on and after six months after the passage and approval of this act, no domestic or foreign association now engaged in the business of a building and loan association, or a business of like character, shall be permitted to conduct that business in this state unless it complies in every respect with the provisions of this act.

**History:** En. Sec. 34, Ch. 57, L. 1927;  
amd. Sec. 81, Ch. 431, L. 1975.

**Amendments**

The 1975 amendment made minor changes in phraseology and punctuation.

**7-137. (6355.36) Penalties.**

**Compiler's Notes**

Section 170, Ch. 431, Laws 1975, sub-

stituted "department" in this section for "superintendent of banks."

**7-138. (6355.37) Department report.** The department shall preserve in permanent form a full record of its proceedings, including a concise statement of each association examined, and it shall annually make a report to the governor of the general conduct and condition of the building and loan associations doing business in this state, with those suggestions as it considers expedient. The report shall also include the information contained in the statement required of the association, and arranged in tabulated form.

**History:** En. Sec. 36, Ch. 57, L. 1927;  
amd. Sec. 82, Ch. 431, L. 1975.

**Amendments**

The 1975 amendment substituted "de-

partment" for "superintendent of banks"; deleted a third sentence; and made minor changes in phraseology. For prior version, see parent volume.

**7-139. (6355.38) Obtaining property by fraud—false report—refusal to permit inspection of books.** A director, officer, agent, or employee of a building and loan association is guilty of a felony who:

(1) willfully receives or possesses any of its property, otherwise than in payment for a just demand, and with intent to defraud:

(a) omits to make or directs to be made a full and true entry of it in its books and accounts;

(b) concurs in omitting to make a material entry thereof;

(2) willfully makes or concurs in making or publishing a written report, exhibit, or statement of the association's affairs or pecuniary condition containing any material statement which is false; or

(3) having the custody or control of the association's books, willfully refuses or neglects to make a proper entry in the books as required by law or to exhibit or allow them to be inspected and extracts to be taken from them by the department.

**History:** En. Sec. 37, Ch. 57, L. 1927;  
amd. Sec. 83, Ch. 431, L. 1975; amd. Sec. 30, Ch. 71, L. 1977.

**Amendments**

The 1975 amendment substituted "department" for "superintendent of banks, his chief deputy, or any of his examiners"

in subdivision (4); and made minor changes in phraseology.

The 1977 amendment inserted subdivision designation (1)(a); redesignated former subsection (2) as subdivision (1)(b); redesignated former subsections (3) and (4) as subsections (2) and (3); and made minor changes in phraseology, punctuation and style.

**7-147. (6355.46) Reports and examinations by department confidential.** (1) An employee or agent of the department, who fails to keep secret the facts and information obtained in the course of an examination or by reason of his official position, except when the public duty of that officer requires him to report upon or take official action regarding the affairs of the association so examined, or willfully makes a false official report as to the conditions of the association, shall be removed from office and shall be fined not more than five hundred dollars (\$500), or imprisoned in the penitentiary not less than two (2) years nor more than five (5) years, or both. Nothing in this section prevents the proper exchange of information, relating to building and loan associations and their business, with the representatives of building and loan departments of other states, but in no case shall the private business or affairs of an individual, association, or company be disclosed. The department on request of any federal home loan bank, shall furnish that bank any information it may have relative to the finances, manner of business, methods of bookkeeping, and any other information relating to an association which is a member of, seeking to become a member of, a borrower from, or seeking to become a borrower from, a federal home loan bank.

(2) An association, the officers or agents thereof, and the department may do anything necessary to enable a building and loan association within this state to become a member of the federal home loan bank of this or any adjoining district so far as may be compatible with the constitution of this state and the laws of the United States.

**History:** En. Sec. 45, Ch. 57, L. 1927; amd. Sec. 2, Ch. 11, L. 1933; amd. Sec. 84, Ch. 431, L. 1975.

into subsections; substituted references to department for references to superintendent of banks; and made minor changes in phraseology.

#### **Amendments**

The 1975 amendment divided the section

**7-149. (6355.48) Voluntary liquidation and settlement.** With the consent of the department an association organized under the laws of and doing business in this state, may, if the stockholders consider it advisable, go into liquidation. For the purpose of so doing it may, at any regular or called meeting of the stockholders, adopt a resolution declaring that the association intends to go into liquidation and discontinue business as a building and loan association. A copy of the resolution, duly certified by the president and secretary of the association, under the seal thereof, shall be transmitted to the department within ten (10) days after its passage. The department shall then issue its certificate reciting that the resolution has been filed in its office, and that the association is in liquidation. After the filing of the notice, it is unlawful for the association to issue stock, or to loan or advance its money to members or to any other person. All of the income and receipts of the association, in excess of the actual expense of managing it, shall be applied to pay off first the indebtedness and then the stock in the association upon which no loans have been made, the same to be paid pro rata. The board of directors of the association in liquidation may adopt those rules and make those orders which are just and equitable for the sale and disposi-

tion of all property held by the association and for the division of the assets of the association. The association in liquidation may be examined by, and shall be under the supervision of the department.

History: En. Sec. 47, Ch. 57, L. 1927;      Amendments  
amd. Sec. 85, Ch. 431, L. 1975.

The 1975 amendment substituted "department" for "superintendent of banks"; and made minor changes in phraseology.

**7-150. (6355.49) Insolvency or impairment of building and loan association—powers of department.** When it appears to the department that the affairs of a building and loan association are in an unsound condition, or that it is conducting its business in an unsafe or unlawful manner, the department may take possession of all books, records, and assets of every description of the association and retain possession of them pending the further proceedings specified in this section. If the board of directors, secretary, or person in charge of the association refuses to permit the department to take possession, the department shall communicate that fact to the attorney general. The attorney general shall at once institute the proceedings necessary to place the department in immediate possession of the property of the association. Upon taking possession of the effects of the association, the department shall prepare a full and true statement of the affairs and condition of the association, including an itemized statement of its assets and liabilities and shall receive and collect all debts, dues and claims belonging to it and pay the immediate and reasonable expenses of the department's trust. When the condition of the association has been fully ascertained and it appears that the affairs of the association are in fact in an unsound condition the department shall at once notify, in writing, the board of directors of the association of its decision, giving them twenty (20) days in which to restore the affairs of the association to sound condition. Meanwhile, the department shall remain in charge of the books, records, and assets of every description of the association, shall attend or be represented at all directors and stockholders meetings held, and shall suggest those steps it considers necessary to restore the association to a sound condition. If the association is not restored to a sound condition within twenty (20) days, the department shall report the facts to the attorney general. The attorney general shall institute proceedings in the district court of the county in which the association has its principal place of business, for the appointment of the department as receiver. As receiver, the department may collect all moneys due the association and may do those other acts which are necessary to conserve its assets and business, and it shall liquidate the association's affairs. The department may, except as otherwise limited by the terms of this act, do any acts necessary or, in its discretion, desirable for the protection of the property and assets of the association and the speedy and economical liquidation of its assets and affairs and the payment of its creditors, or for the resumption of business of the association where that is practicable or desirable. The department may institute in its own name as, or in the name of the association, those legal proceedings it considers expedient for those purposes. By applying to the district court of the county in which the association is located, or to the judge thereof, in chambers, the department



may, upon sufficient showing of cause, obtain an order to sell, compromise or compound any bad or doubtful debt or claim, and to sell any of the assets. The sale may be made to stockholders, officers, directors, or others interested in the association, on consent of the court. On the proceedings the association shall be made a party by notice issued on order of the court or judge, in place of summons, but served in like manner. The hearing of the application or petition by the department may be had at any time, either in term or vacation in court, or in chambers, as the court may order, after the association has had five (5) days' notice of the application.

**History:** En. Sec. 48, Ch. 57, L. 1927;  
amd. Sec. 86, Ch. 431, L. 1975.

#### Amendments

The 1975 amendment substituted "department" for "superintendent of banks"; and made minor changes in phraseology.

### 7-151. (6355.50) Reorganization of associations, etc.

#### Compiler's Notes

Section 170, Ch. 431, Laws 1975, sub-

stituted "department" in this section for "superintendent of banks."

### 7-152. (6355.51) Repealed.

#### Repeal

Section 7-152 (Sec. 59, Ch. 57, L. 1927), relating to fees of the secretary of state

and of the state examiner, was repealed by Sec. 176, Ch. 431, Laws 1975.

**7-156. (6374.8) Conversion into federal savings and loan associations.** Any building and loan association or other home financing organization, by whatever name or style it may be designated, eligible to become a federal savings and loan association may convert itself into a federal savings and loan association by following the procedure hereinafter outlined:

(1) At any regular meeting of the shareholders of any such association or at any special meeting of the shareholders of such association, in either case called to consider such action and held in accordance with the laws governing such association, such shareholders, by an affirmative vote of the majority of the shareholders, in person or by proxy, may declare by resolution the determination to convert the association into a federal savings and loan association.

(2) A copy of the minutes of the meeting of the shareholders verified by the affidavit of the president or vice-president and the secretary of the meeting shall be filed with the department of business regulation within 10 days after the meeting. The verified copy of the minutes of such meeting when so filed shall be presumptive evidence of the holding and of the action of such meeting.

(3) Within a reasonable time and without any unnecessary delay after the adjournment of such meeting of shareholders, such association shall take any action necessary to make it a federal savings and loan association, and within 10 days after receipt of the federal charter there shall be filed with the department of business regulation a copy of the charter issued to such association by the federal home loan bank board or a certifi-

cate showing the organization of such association as a federal savings and loan association certified by or on behalf of the federal home loan bank board. Upon the filing of such instrument such association shall cease to be a state association and shall thereafter be a federal savings and loan association.

**History:** En. Sec. 1, Ch. 174, L. 1935; amd. Sec. 31, Ch. 71, L. 1977.

#### **Amendments**

The 1977 amendment redesignated former subdivisions (A) through (C) as subdivisions (1) through (3); substituted ref-

erences to the department of business regulation for references to the office or department of the state having supervision of associations in subsections (2) and (3); and made minor changes in phraseology, punctuation and style.





## TITLE 8—CARRIERS AND CARRIAGE

### Chapter

1. Motor carriers—license and regulation, 8-101 to 8-101.2, 8-102, 8-102.1, 8-103 to 8-103.4, 8-104.4, 8-104.5, 8-107.1, 7-107.2, 8-108 to 8-111.1, 8-116, 8-118, 8-119, 8-126, 8-127, 8-131, 8-132.
2. Pipeline carriers of oil—regulation, 8-201.1.
8. Common carriers of persons, property and messages, their rights and obligations, 8-812.1, 8-812.2.
9. Notice of hearings to Montana consumer counsel, 8-901, 8-902.

### CHAPTER 1—MOTOR CARRIERS—LICENSE AND REGULATION

#### Section

- 8-101. Definition of terms.
  - 8-101.1. Transportation of livestock by farmers and ranchers exempt.
  - 8-101.2. Certificate required for commercial transportation of livestock.
- 8-102. Classification of motor carriers—operation according to provisions of act required.
  - 8-102.1. Implementation.
- 8-103. Commission to supervise and regulate motor carriers—appointment and duties of supervisor.
  - 8-103.1. Leasing of power equipment.
  - 8-103.2. Interchange of equipment.
  - 8-103.3. Lease of Montana railroad commission certificate.
  - 8-103.4. Approval of carrier agreements.
  - 8-104.4. Rate preference, discrimination forbidden.
  - 8-104.5. Changes, revisions of rate schedules, how made.
  - 8-107.1. Suspension of intrastate operating authority by petition.
  - 8-107.2. Suspension creates presumption of absence of public convenience and necessity.
- 8-108. Certificate required of class A motor carriers—contents of application—fee.
- 8-109. Certificate required of class B motor carriers—contents of application—fee.
- 8-110. Certificate required of class C motor carriers—contents of application—fee.
- 8-111. Hearing to consider applications—notice—matters considered—manner of conducting hearings.
  - 8-111.1. Time for hearing and issuance of finding, order or decision.
- 8-116. Annual fee for motor carriers—fee for seasonal operators—compliance required of motor carriers operating in more than one state—revocation of certificate for failure to pay fees—lien of fees and charges.
- 8-118. Records of motor carriers to be open for inspection by commission—system of accounts to be prescribed—reports required.
- 8-119. Penalties for violations.
- 8-126. Fees required for filing various documents.
- 8-127. Additional fees covering motor carriers.
- 8-131. Temporary authority for service—duration—extension.
- 8-132. Purpose.

8-101. (3847.1) **Definition of terms.** Unless the context requires otherwise, in this act:

(1) "Commission" or "board" means the public service commission provided for in section 82A-1702.

(2) "Corporation" means a corporation, company, association or joint-stock association.

(3) "Person" means an individual, firm, or copartnership.

(4) "Certificate" means the certificate of public convenience and necessity issued under this act.

(5) "Public highway" means a public street, road, highway, or way in this state.

(6) "Motor vehicle" includes vehicles or machines, motor trucks, tractors or other self-propelled vehicles used for the transportation of property or persons over the public highways of the state, and any trailer, semitrailer, dollie or other vehicle drawn thereby.

(7) "Between fixed termini or over a regular route" means the termini or route between or over which a motor carrier usually or ordinarily operates motor vehicles, even though there may be periodical or irregular departures from the termini or route. Whether or not a motor vehicle is operated by a motor carrier between fixed termini, or over a regular route, or otherwise, under this act, is a question of fact to be determined by the commission.

(8) "Motor carrier" means a person or corporation, their lessees, trustees, or receivers, appointed by any court, operating motor vehicles upon any public highway in this state for the transportation of persons or property for hire, on a commercial basis either as a common carrier or under private contract, agreement, charter, or undertaking. The term includes any motor carrier serving the public in the business of transportation of ashes, trash, waste, refuse, rubbish, garbage, and organic and inorganic matter. However, this act does not affect motor vehicles used in carrying property consisting of agricultural commodities (not including manufactured products thereof), if the motor vehicles are not used in carrying other property or passengers for compensation; the operation of school buses which are used in conveying pupils or other students enrolled in classes to and from district or other schools, or in transportation movements related to school activities which are sponsored or supervised by school authorities, the transportation by means of motor vehicles in the regular course of business of employees, supplies, and materials by a person, firm, or corporation engaged exclusively in the construction or maintenance of highways, or engaged exclusively in logging or mining operations, in so far as the use of employees, supplies, and materials in construction and production is concerned; the transportation of property by motor vehicle in a city, town, or village with a population, according to the latest United States census, of less than five hundred (500) persons, or in the commercial areas thereof as determined by the commission; the transportation of newspapers, newspaper supplements, periodicals or magazines; tow trucks and wreckers designed and exclusively used in towing abandoned, wrecked, or disabled vehicles or while these tow trucks and wreckers are rendering assistance to abandoned, wrecked, or disabled vehicles; motor vehicles used exclusively in carrying junk vehicles from a collection point to a motor vehicle wrecking facility or a motor vehicle graveyard; or ambulances.

(9) "For hire" means for remuneration of any kind, paid or promised, either directly or indirectly, or received or obtained through leasing, brokering, or buy-and-sell arrangements from which a remuneration is obtained or derived for transportation service. An accommodative transportation movement by a person not in the transportation business is not a service for hire, even though the persons owning the property transported or persons transported share in the cost or pay for the movement. This act does not prevent bona fide leases, brokerage agreements, or buy-and-sell agreements.

(10) "Compensation" means the charge imposed on motor carriers for the use of the highways in this state by motor carriers, under section 8-116.

(11) "Railroad" means the movement of cars on rails, regardless of the motive power used.

**History:** En. Sec. 1, Ch. 184, L. 1931; amd. Sec. 1, Ch. 153, L. 1943; amd. Sec. 1, Ch. 262, L. 1947; amd. Sec. 1, Ch. 204, L. 1963; amd. Sec. 1, Ch. 190, L. 1969; amd. Sec. 1, Ch. 275, L. 1971; amd. Sec. 1, Ch. 168, L. 1973; amd. Sec. 1, Ch. 174, L. 1973; amd. Sec. 1, Ch. 315, L. 1974; amd. Sec. 1, Ch. 66, L. 1975; amd. Sec. 1, Ch. 139, L. 1977.

#### Amendments

The 1969 amendment added "or the transportation of newspapers \* \* \* or ambulances" at the end of subdivision (8).

The 1971 amendment deleted "ordinary livestock or" before "agricultural commodities" near the beginning of the proviso to subdivision (8); and made a minor change in style.

Chapter 168, Laws of 1973, substituted "pupils or other students enrolled in classes" for "school children" in the proviso to subdivision (8); and inserted "or in transportation movements related to school activities which are sponsored or supervised by school authorities" in the proviso to subdivision (8).

Chapter 174, Laws of 1973, substituted "machines, motor trucks, tractors or other self-propelled vehicles" in subdivision (f) for "machines propelled by any power other than muscular"; added "and any trailer, semitrailer, dolly or other vehicle drawn thereby" at the end of subdivision (6); and made minor changes in phraseology.

The 1974 amendment changed the subdivision designations from small letters to numerals; substituted subdivision (1) for a definition relating to the board of railroad commissioners; substituted "commission" for "board" in subdivisions (7) and (8); and made minor changes in phraseology, punctuation and style.

The 1975 amendment inserted the provision relating to motor vehicles carrying junked vehicles before "or ambulances" at the end of subdivision (8).

The 1977 amendment inserted the second sentence of subdivision (8).

#### Effective Dates

Section 2 of Ch. 168, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 6, 1973.

Section 2 of Ch. 174, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 6, 1973.

#### Constitutionality

Trial court erred in granting defendant's motion to dismiss where complaint alleged that certain portions of this act violated constitutions of state and United States since summary procedure should not be used in cases involving important public issues where any fact is in dispute unless trial judge is satisfied that evidence is sufficient to give him the necessary background of knowledge. *Garrett Freightlines, Inc. v. Montana Railroad & Public Service Commission*, 153 M 380, 457 P 2d 469.

#### Unconstitutional in Part

Because its effect is to impose the \$5 registration fee provided for in section 8-116(a), upon units not considered motor vehicles under federal law (49 C. F. R. 1023.1(h) (1975)), subdivision (6) constitutes an undue burden on interstate commerce (49 U. S. C. § 302(b)(2)(d); 49 C. F. R. 1023.33 (1975)) and, insofar as it declares dollies, trailers or semitrailers to be motor vehicles, is invalid. *State ex rel. Sammons Trucking, Inc. v. Bollinger*, — M —, 544 P 2d 1235.

**8-101.1. Transportation of livestock by farmers and ranchers exempt.** The provisions of this act shall not apply to the transportation of livestock by motor carrier by a bona fide farmer, rancher, or raiser of livestock in his own vehicle or vehicles, or when such farmer, rancher, or raiser of livestock provides transportation for the livestock of another farmer, rancher, or raiser of livestock between farm and farm, ranch and ranch, pasture and pasture, or to a point.

**History:** En. Sec. 2, Ch. 275, L. 1971.

**8-101.2. Certificate required for commercial transportation of livestock.** A person, firm, corporation, association or its or their officers,



agents, employees, or servants, may not operate any motor vehicle or combination of vehicles in the commercial transportation of livestock for hire, without having first obtained a class B certificate of public convenience and necessity from the commission. Provided, however, any commercial transportation movement of livestock in any motor vehicle having a cargo bed of twenty-two (22) feet in length or less, shall be deemed exempt from the provisions of this act.

**History:** En. Sec. 3, Ch. 275, L. 1971; amd. Sec. 1, Ch. 233, L. 1973; amd. Sec. 2, Ch. 315, L. 1974.

#### Amendments

The 1973 amendment inserted the proviso constituting the second sentence.

The 1974 amendment substituted "commission" for "board" in the first sentence; deleted from the end of the section a proviso exempting operators of motor carriers engaged in transporting livestock commercially on July 1, 1970; and made minor changes in phraseology.

**8-102. (3847.2) Classification of motor carriers—operation according to provisions of act required.** (a) Motor carriers are hereby divided into four classes for the purposes of this act, to be known as:

- Class A motor carriers,
- Class B motor carriers,
- Class C motor carriers,
- Class D motor carriers.

Class A motor carriers shall embrace all motor carriers operating between fixed termini or over a regular route, under regular rates or charges, based upon either station-to-station rates or upon a mileage rate or scale.

Class B motor carriers shall embrace all motor carriers operating under regular rates or charges based upon either station-to-station rates or upon a mileage rate or scale, and not between fixed termini or over a regular route.

Class C motor carriers shall embrace all motor carriers operating motor vehicles for distributing, delivering or collecting wares, merchandise, or commodities, or transporting persons, where the remuneration is fixed in and the transportation service furnished under a contract, charter, agreement or undertaking. Such class C motor carriers distributing, delivering or collecting wares, merchandise or commodities, or transporting persons shall do so under six (6) contracts, charters, agreements or undertakings or less annually. Every class C motor carrier providing such transportation services by means of more than six (6) contracts, charters, agreements or undertakings shall be deemed to be providing common carriage and shall operate under a class B motor carrier certificate in lieu of such class C motor carrier certificate. All class C motor carriers must annually submit to this commission the names and addresses of all persons, firms, corporations or other legal entity with whom the said class C carrier has executed a contract, charter, agreement or undertaking for the distribution, delivery or collection of wares, merchandise or commodities, or transporting persons.

The provisions of this section requiring certain class C motor carriers to operate under a class B motor carrier certificate and to submit an annual statement to the commission shall not apply to solid waste contractors, to household goods carriers as defined by the department of public service regulation, nor to any carrier whose authority is confined by certificate

to transportation within a distance of fifty (50) miles or less from a particular location and that is performing pick up and delivery service under contract for one or more common carriers within that area.

Class D motor carriers embraces all motor carriers operating motor vehicles transporting, including pickup and disposal of, ashes, trash, waste, refuse, rubbish, garbage, and organic and inorganic matter. Class D carriers shall conduct operations pursuant to a certificate of public convenience and necessity issued by the commission authorizing the transportation of the above-described commodities. Class D carriers when applying for a new or additional authority shall file an application with the commission in accordance with the requirements of the Montana Motor Carrier Act and the rules of the commission.

(b) \* \* \* [Same as parent volume.]

**History:** En. Sec. 2, Ch. 184, L. 1931; amd. Sec. 1, Ch. 172, L. 1973; amd. Sec. 1, Ch. 145, L. 1974; amd. Sec. 1, Ch. 138, L. 1977.

#### Amendments

The 1973 amendment added the second, third and fourth sentences, relating to class C carriers, to the next to the final paragraph of subsection (a).

The 1974 amendment added the final paragraph of subsection (a).

The 1977 amendment substituted "four classes" for "three (3) classes" in the introductory phrase of subsection (a); added "Class D motor carriers" to the first paragraph of subsection (a); and added the sixth paragraph of subsection (a).

#### Effective Date

Section 2 of Ch. 145, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 11, 1974.

**8-102.1. Implementation.** All Class D motor carriers, whether property carriers or otherwise, who have conducted a motor carrier transportation service for hire utilizing motor vehicle equipment and appropriate disposal sites consistent with the laws of this state and rules of the commission and the department of health and environmental sciences shall, upon written proof consisting of prior business records reflecting a transportation service for 1 year prior to the effective date of this act, which business records shall be submitted to the commission in an informal manner, receive a certificate of public convenience and necessity as a Class D carrier authorizing transportation of the above-described commodities within the geographical area described in the written proof submitted. Such proof must be submitted to the commission within 4 months following the effective date of this act; and the commission shall issue such Class D certificates within an additional 90 days, and thereafter, no Class A, B, or C carrier will be authorized or permitted to transport ashes, trash, waste, refuse, rubbish, garbage, or organic and inorganic matter within the state of Montana.

**History:** En. 8-102.1 by Sec. 2, Ch. 138, L. 1977.

#### Title of Act

An act creating a class "D" motor carrier encompassing all motor carriers transporting garbage and solid waste; amending section 8-102, R. C. M. 1947.

**8-103. (3847.2) Commission to supervise and regulate motor carriers—appointment and duties of supervisor.** (a) The commission is hereby vested with power and authority, and it is hereby made its duty to supervise and



regulate every motor carrier in this state; to fix specific, just, reasonable, equal and nondiscriminatory rates, fares, charges and classifications for class A and class B motor carriers; to regulate the properties, facilities, operations, accounts, service, practices, affairs and safety of operations of all motor carriers; to require the filing of annual and other reports, tariffs schedules, or other data by such motor carriers and to supervise and regulate motor carriers in all matters affecting the relationship between such motor carriers and the traveling and shipping public. To fully secure adequate motor transportation facilities for all users of such service, and to secure the public advantages thereof, the commission shall encourage a system of common carrier motor transportation within the state for the convenience of the shipping public. The maintenance of a common carrier motor transportation system within Montana is hereby declared to be a public purpose. The commission shall have power and authority by general order or otherwise to prescribe rules and regulations in conformity with this act applicable to any and all motor carriers.

(b) The commission shall appoint a supervisor of motor carriers who shall have general responsibility to it for enforcement of the provisions of this act. The supervisor shall direct all enforcement activities in behalf of the commission, including the investigation and prosecution of violations of this act or the rules, regulations or orders prescribed thereunder by the commission. The supervisor shall be either an attorney admitted to practice law in the state of Montana, or a person qualified by at least five (5) years of suitable experience and training in appropriate phases of the motor carrier industry; he shall serve at the pleasure of the commission and at an annual salary to be set by the commission. The supervisor, and whatever field inspectors may be employed by the commission to assist him, shall be deemed peace officers for the purpose of making arrests in connection with violations of this act, and issuing summonses, accepting bail and serving warrants of arrest. The supervisor and field inspectors are empowered to make reasonable inspections of cargoes carried by commercial motor vehicles and require production of manifests, bills of lading, leases and other documents relating to the cargo, routing or ownership of such vehicles.

(c) All rules and regulations in relation to schedules, service, tariffs, rates, facilities, accounts and reports shall have due regard for the differences existing between class A, class B, and class C motor carriers as herein defined, and shall be just, fair and reasonable to the said classes of motor carriers in their relations to each other and to the public. In fixing the tariff or rates to be charged by class A and class B motor carriers for the carrying of persons and/or property, the commission shall take into consideration the kind and character of service to be performed, the public necessity therefor, and the effect of such tariff and rates upon other transportation agencies, if any, and as far as possible avoid detrimental or unreasonable competition with existing railroad service or service furnished by a motor carrier.

History: En. Sec. 3, Ch. 184, L. 1931; amd. Sec. 1, Ch. 205, L. 1963; amd. Sec. 1, Ch. 182, L. 1971; amd. Sec. 20, Ch. 315, L. 1974.

#### Amendments

The 1971 amendment inserted the second and third sentences in subsection (a).

The 1974 amendment substituted "commission" for "board of railroad commis-



sioners" and "board" throughout the section.

#### Duties of Board

Under this section and section 8-112 board of railroad commissioners is authorized, and has duty, to supervise every

motor carrier in state and may, in its discretion, upon issuance of any certificate, attach such terms and conditions as in its judgment may be required. *Walter v. Board of Railroad Commrs.*, 153 M 384, 457 P 2d 479.

**8-103.1. Leasing of power equipment.** All class A, B, and C carriers subject to the jurisdiction of the commission may lease power equipment for the purpose of performing transportation movements within the state of Montana. The leasing of such power units must be in writing and effective only upon specific approval of the commission. Movement of such leased units without prior approval of the commission is prohibited.

All leases must contain (1) the full names and addresses of negotiating parties, (2) a complete description of each vehicle involved, (3) provision that the sole possession, responsibility, control and direction of each vehicle and its driver resides with the lessee for the entire term of the lease, (4) provision that the lessee assumes full responsibility for all regulatory fees, (5) amount of compensation to be paid for use of the vehicle while under the lease and the method by which such compensation is determined, (6) the renewal conditions of the lease, if any, and (7) the term length of the lease.

A copy of the lease, certified by the commission, must be maintained in each leased vehicle at all times.

Each power unit so leased must display in a conspicuous place on both sides of such vehicle the identity and address of the lessor, and lessee, and the certificate number under which the power unit is operating. The leasing of power units by an authorized carrier to a noncertificated carrier is prohibited.

**History:** En. 8-103.1 by Sec. 1, Ch. 105, L. 1969; amd. Sec. 20, Ch. 315, L. 1974.

#### Title of Act

An act providing that all authorized carriers within the state may lease power equipment for the purpose of performing transportation movements, providing further that the leasing of such power units must be in writing and effective only upon specific approval of the board, setting forth the provisions required in the lease,

providing that a copy of the lease, approved by the board, be maintained in each leased vehicle, providing for proper decals on each leased vehicle, leasing of power units by an authorized carrier to a noncertificated carrier prohibited.

#### Amendments

The 1974 amendment substituted "commission" for "board of railroad commissioners" and "board" throughout the section.

**8-103.2. Interchange of equipment.** Common carriers authorized by the board may enter into interchange agreements with other authorized common carriers providing for the interchange of equipment. Such agreements must be joint applications made to the board by the carriers affected. To be approved by the board the interchange must take place at a fixed terminal where the carriers' routes intersect. Manifests, waybills or agreements and all shipping data must be in the possession of the operator of the interchanged equipment. When an interchange has been authorized such equipment shall be operated only by the certificate holder over whose

route such equipment is being operated. Interchange agreements between contract carriers, class C, is prohibited.

**History:** En. 8-103.2 by Sec. 1, Ch. 106, L. 1969.

#### **Title of Act**

An act providing for authorized common carriers to enter into interchange agreements with other authorized common carriers, providing for joint applica-

tions for such agreements, providing that the interchange must take place at a fixed terminal where the carriers' routes intersect, providing further for shipping data to be in the possession of the operator of the interchanged equipment, interchange agreements between contract carriers prohibited.

**8-103.3. Lease of Montana railroad commission certificate.** An authorized carrier operating within the state of Montana may lease its certificate, or any integral segment thereof, to another carrier only by approval of the commission. The contract or lease, under which the certificate is leased, must be in writing and approved by the commission prior to any operation under the certificate. The contract or lease must specify: (a) the period for which a certificate is to be leased, which shall not be less than (30) days; (b) the compensation to be paid; (c) the time or date upon which the lease will commence and terminate; (d) and the signatures of the parties thereto. Operation under the certificate is prohibited until approved by the commission in writing. During the period of the contract or lease transportation movements under the contract or lease must be performed by the entity contracting for or leasing the certificate, or any integral segment thereof, while transportation movements by the owner lessor, is prohibited.

**History:** En. 8-103.3 by Sec. 1, Ch. 107, L. 1969; amd. Sec. 20, Ch. 315, L. 1974.

#### **Title of Act**

An act providing that authorized carriers within the state may lease operating certificates, or any integral segment thereof, upon board approval; providing that the contract or lease must be in writing and specifying the provisions contained therein; providing that transportation movements under the certificate be prohibited

until approved by the board in writing. Transportation during the term of the contract or lease to be performed by the entity contracting for or leasing certificate; transportation during the term of the contract or lease by the owner, lessor, is prohibited.

#### **Amendments**

The 1974 amendment substituted "commission" for "board" throughout the section.

**8-103.4. Approval of carrier agreements.** (1) Any carrier as defined in 8-101(h) which is a party to an agreement between or among two or more carriers relating to rates, fares, classifications, divisions, allowances, or charges (including charges between carriers and compensation paid or received for the use of facilities and equipment), or rules pertaining thereto, or procedures for the joint consideration, initiation or establishment thereof, may, under such rules as the commission prescribes, apply to the public service commission for approval of the agreement and the commission shall by order approve any agreement, if approval thereof is not prohibited by subsections (3), (4), or (5) of this section. The approval of the commission shall be granted only upon such terms and conditions as the commission may prescribe as necessary to enable it to grant its approval in accordance with this subsection.

(2) Each conference, bureau, committee, or other organization established or continued pursuant to any agreement approved by the commission and the provisions of this section, shall maintain such accounts, records, files, and memoranda and shall submit to the commission such reports, as may be prescribed by the commission, and all such accounts, records, files, and memoranda shall be subject to inspection by the commission or its duly authorized representative.

(3) The commission may not approve under this section any agreement between a carrier by highway and a carrier by rail unless it finds that such agreement is of the character described in this section and is limited to matters relating to the transportation under joint rates or over through routes.

(4) The commission may not approve under this section any agreement which it finds is an agreement with respect to pooling or division of traffic, service, or earnings.

(5) The commission may not approve under this section any agreement which establishes a procedure for the determination of any matter through joint consideration unless it finds that under the agreement there is accorded to each party the free and unrestrained right to take independent action either before or after any determination arrived at through such procedure.

(6) The commission may, upon complaint or upon its own initiative without complaint, investigate and determine whether any agreement previously approved by it under this section, or any terms or conditions upon which such approval was granted, is not in conformity with this section or whether any such terms or conditions are not necessary for the purpose of conformity with this section. After such investigation, the commission may by order terminate or modify its approval of such agreement if it finds such action necessary to insure conformity with this section, and may modify the terms and conditions upon which such approval was granted to the extent it finds necessary to insure conformity with this section or to the extent it finds its terms and conditions unnecessary to insure such conformity. The effective date of any order terminating or modifying approval, or modifying terms and conditions, may be postponed for such period as the commission determines is reasonably necessary to avoid undue hardship.

(7) No order may be entered under this section except after interested parties have been afforded reasonable opportunity for hearing.

(8) The parties to any agreement approved by the commission under this section and other persons are, if the approval of such agreement is not prohibited by subsections (3), (4), or (5) of this section, hereby exempted from Montana antitrust laws with respect to such agreement, including chapter 5, Title 51 or any other statutes prohibiting monopolies, price fixing, or restraint of trade.



(9) Any action of the commission under this section in approving an agreement, or in denying an application for such approval, or in terminating or modifying its approval of an agreement, or in prescribing terms and conditions upon which its approval is to be granted, or in modifying such terms and conditions, shall be construed as having effect solely with reference to the applicability of subsection (8).

**History:** En. 8-103.4 by Sec. 1, Ch. 288, L. 1975; amd. Sec. 25, Ch. 518, L. 1977.

#### **Title of Act**

An act relating to public service commission approval of certain motor carrier agreements; and providing an immediate effective date.

#### **Amendments**

The 1977 amendment substituted "chapter 5, Title 51" near the end of subsection (8) for "section 51-401"; and made minor changes in phraseology, punctuation and style.

#### **Separability Clause**

Section 2 of Ch. 288, Laws 1975 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

#### **Effective Date**

Section 3 of Ch. 288, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved April 7, 1975.

**8-104.4. Rate preference, discrimination forbidden.** All rates, fares, charges, classifications, or rules of service for the transportation of prop-just, reasonable, and nondiscriminatory, and no motor carrier operating under established rates shall make, give, or permit any undue preference or advantage to any particular person, company, partnership, corporation or locality, or any particular description of traffic, nor shall such motor carrier subject any particular person, company, partnership, corporation or locality, or any particular description of traffic, to any prejudice or disadvantage in any respect. Nothing herein provided shall prevent the board from authorizing different rates or schedules of rates for service between the same places, or between different points of origin and/or destination within the same places, when such different rates are justified by the differing character of service to be rendered by the carrier to a shipper or consignee.

The board may, upon its own initiative or upon the complaint of any interested party, investigate any rate, fare, charge, classification, or rule of service contained in the schedule of any motor carrier; if the board shall find, after such investigation, that any such rate, fare, charge, classification, or rule of service is unfair, unjust, unreasonable, or discriminatory, it shall disallow the same and fix a rate, fare, charge, classification, or rule of service which shall be fair, just, reasonable, and nondiscriminatory, and it shall order the affected motor carrier or carriers to conform to such modified schedule; provided, however, that each motor carrier affected by any complaint or investigation shall first be given notice of the same and an opportunity to be heard before the board.

**History:** En. Sec. 4, Ch. 201, L. 1961; amd. Sec. 2, Ch. 182, L. 1971.

#### **Amendments**

The 1971 amendment added the second sentence to the first paragraph and made a minor change in punctuation.

**8-104.5. Changes, revisions of rate schedules, how made.** No motor carrier shall change or revise any rate, fare, charge, classification, or rule of service contained in its schedule without first obtaining approval therefor from the board. Such changes or revisions shall be made by filing with the board the tariff sheet or sheets containing such changes or revisions, plainly stating the change or changes, or revision or revisions, to be made; provided further, that the public shall be provided with such notice of the proposed changes or revisions as the board shall, by rule, require. The tariff sheet or sheets containing such changes or revisions shall be deemed approved and effective thirty (30) days after the same are filed unless the proposed revisions or changes are suspended or disallowed by the board prior to the expiration of the thirty (30) day period; provided however, that the board may, for good cause, allow any change or revision to become effective on less than thirty (30) days after the filing thereof. Upon filing such changes or revisions, all tariff sheet or sheets, when suspended by the board, must be supported by such prepared testimony and exhibits from the motor carrier as will support such changes or revisions. The prepared testimony and exhibits must be filed with the commission thirty (30) days after the effective date of such suspension. Such testimony and exhibits may be supplemented prior to, or at the time of hearing, and supplemental exhibits may be filed after the close of the hearing at the direction or with permission of the commission.

Upon its own initiative, or upon the complaint of any interested party filed with the board within twenty (20) days after the date upon which a change or revision of any rate, fare, charge or classification is filed with the board, the board may suspend the operation of such rate, fare, charge, or classification for a period not to exceed one hundred eighty (180) days, provided however that the order directing such suspension must be issued by the board not less than two (2) business days prior to the proposed effective date; and provided further, that the motor carrier or carriers filing such rate, fare, charge, or classification shall be given prompt notice by the complaining party mailing a copy of the complaint concerning such proposed change or revision to the carrier or publishing agent, and such carrier or carriers also shall be given an opportunity to reply to any such complaint. If the proposed change or revision is in a tariff issued by a tariff publishing bureau for a motor carrier or carriers, notice to such bureau of any complaint will constitute notice to the participating carriers in such tariff. When the suspension of any proposed change or revision in a tariff is ordered by the board, it shall also order a public hearing to consider the reasonableness of the proposed change or revision; due notice shall be given for such hearing to all known interested or affected persons and the same shall be allowed to appear and present evidence. After considering the evidence presented at such hearing, the board shall issue an order approving, denying, or modifying the proposed change or revision; provided however, that unless such hearing is held and such order is issued within one hundred eighty (180) days from the date upon which the suspension was ordered, the proposed change or revision shall be deemed approved and effective as filed.

**History:** En. Sec. 5, Ch. 201, L. 1961;      **Amendments**  
amd. Sec. 1, Ch. 235, L. 1973.

The 1973 amendment added the last three



sentences to the first paragraph; extended the filing time specified near the beginning of the second paragraph from fifteen to twenty days; extended the period for which the board may suspend the operation of a rate, fare, charge or classification from one hundred and twenty days to one hundred and eighty days; substituted "by the complaining party mailing a copy of the complaint concerning such proposed change or revision to the carrier or publishing agent," for "by the board of any complaint filed by any interested party to

any proposed tariff change or revision" in the middle of the second paragraph; and extended the time for a hearing on the complaint from one hundred and twenty days to one hundred and eighty days from the date upon which the suspension was ordered.

#### Effective Date

Section 2 of Ch. 235, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 8, 1973.

**8-107.1. Suspension of intrastate operating authority by petition.** Every motor carrier as defined within this act, may petition this commission in writing to suspend its intrastate operating authority for a period not to exceed six (6) months. An additional six (6) months' suspension may be requested and granted, but no other. Such suspension may be granted by the commission upon a showing of present absence of public convenience and necessity, or other showing of matters affecting motor carrier transportation.

**History:** En. 8-107.1 by Sec. 1, Ch. 173, L. 1973.

#### Title of Act

An act providing that every motor carrier may petition the commission to suspend its intrastate operating authority for a period not to exceed six (6) months; providing that an additional six (6) months' suspension may be requested and granted, but no other; that such suspen-

sion be granted upon a showing of present absence of public convenience and necessity or other showing of matters affecting motor carrier transportation; and providing an effective date.

#### Effective Date

Section 2 of Ch. 173, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 6, 1973.

**8-107.2. Suspension creates presumption of absence of public convenience and necessity.** The suspension of any intrastate operating authority of any carrier, as provided for in the preceding section, for a period of twelve (12) consecutive months shall be deemed to establish a prima facie presumption of absence of public convenience and necessity. If, after notice and hearing, the carrier is unable to prove the existence of public convenience and necessity or existing demand for the transportation service, the commission is authorized to cancel such certificate of public convenience and necessity.

**History:** En. 8-107.2 by Sec. 1, Ch. 236, L. 1973.

#### Title of Act

An act providing that the suspension of any intrastate operating authority as provided in section 8-107.1, R. C. M. 1947, for a period of twelve (12) consecutive months is a prima facie presumption of absence of public convenience and necessity; providing that if, after notice and hearing, the carrier is unable to prove the existence

of public convenience and necessity or existing demand for the transportation service, the commission is authorized to cancel such certificate; and providing an effective date.

#### Effective Date

Section 2 of Ch. 236, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 8, 1973.

**8-108. (3847.8) Certificate required of class A motor carriers—contents of application—fee.** (a) and (b) \* \* \* [Same as parent volume.]



(c) Such application shall be accompanied by a filing fee of \$100 to \$300 to be set by the board based on the number of counties for which the certificate is requested.

**History:** En. Sec. 8, Ch. 184, L. 1931; amd. Sec. 22, Ch. 121, L. 1965; amd. Sec. 1, Ch. 243, L. 1974; amd. Sec. 1, Ch. 472, L. 1977.

#### Amendments

The 1974 amendment added the second clause in subsection (c) relating to paying the cost of publishing notice of hearing.

The 1977 amendment substituted a fee range of \$100 to \$300 in subsection (c) for a former range of \$15 to \$35; and deleted "and an additional sum to be set by the board to pay the cost of publishing hearing in the legal advertising sections of an appropriate newspaper or newspapers" from the end of subsection (c).

**8-109. (3847.9) Certificate required of class B motor carriers—contents of application—fee.** (a) and (b) \* \* \* [Same as parent volume.]

(c) Such application shall be accompanied by a filing fee of \$100 to \$300 to be set by the board based on the number of counties for which the certificate is requested.

**History:** En. Sec. 9, Ch. 184, L. 1931; amd. Sec. 23, Ch. 121, L. 1965; amd. Sec. 2, Ch. 243, L. 1974; amd. Sec. 2, Ch. 472, L. 1977.

#### Amendments

The 1974 amendment added the second clause in subsection (c) relating to paying the cost of publishing notice of hearing.

The 1977 amendment substituted a filing fee range of \$100 to \$300 in subsection (c) for a former range of \$15 to \$35; and deleted "and an additional sum to be set by the board to pay the cost of publishing notice of hearing in the legal advertising sections of appropriate newspaper or newspapers" from the end of subsection (c).

**8-110. (3847.10) Certificate required of class C motor carriers—contents of application—fee.** (1)(a) No class C motor carrier as in this act defined, except any class C motor carrier operating pursuant to the terms and conditions of a United States government contract, agency or department thereof, or of a contract for transporting solid waste with the state or an agency or department thereof, shall hereafter operate for the distribution, delivery, or collection of goods, wares, merchandise, or commodities, or for the transportation of persons on any public highway in this state, without first having obtained from the board, under the provisions of this act, a certificate that public convenience and necessity require such operation.

(b) \* \* \* [Same as parent volume.]

(c) Such application shall be accompanied by a fee of \$100 to \$300 to be set by the board based on the number of counties for which the certificate is requested.

(2) The transportation for hire of any persons or commodities between any two (2) points within the state of Montana by any motor carrier pursuant to the terms of a written contract between said carrier and the United States government, agency or department thereof, or the state or an agency or department thereof, for the transportation of solid waste, shall be deemed a transportation movement subject to the provisions of the Montana Motor Carrier Act, R. C. M. 1947, 8-101 et seq., provided, however, that the presentation of the written contract to the

board shall be deemed sufficient proof of public convenience and necessity in accordance with the terms and conditions contained within the United States government or state contract.

The class C certificate of public convenience and necessity issued pursuant to the terms and conditions of the United States government or state contract may be issued by the board upon receipt of an executed copy of the United States government or state contract. The certificate of public convenience and necessity may be issued thereafter without requiring the board to fix a time and place for public hearing.

The certificate of public convenience and necessity, issued pursuant to the terms of the United States government or state contract, is authorized only for the duration of the United States government or state contract concerned, provided, however, the certificate may be renewed for another definite term if the same motor carrier is the motor carrier authorized to operate under the United States government or state contract.

**History:** En. Sec. 10, Ch. 184, L. 1931; amd. Sec. 24, Ch. 121, L. 1965; amd. Sec. 1, Ch. 69, L. 1971; amd. Sec. 3, Ch. 243, L. 1974; amd. Sec. 1, Ch. 179, L. 1975; amd. Sec. 3, Ch. 472, L. 1977.

#### Amendments

The 1971 amendment designated the former language as subsection (1); inserted "except any class C motor carrier operating pursuant to the terms and conditions of the United States government contract, agency or department thereof" in subdivision (1)(a); and added subsection (2).

The 1974 amendment added the second clause in subdivision (1)(c) relating to paying the cost of publishing notice of hearing.

The 1975 amendment inserted "or of a contract for transporting solid waste with the state or an agency or department thereof" before "shall hereafter operate"

in subdivision (1)(a); inserted "or the state or an agency or department thereof, for the transportation of solid waste" before "shall be deemed" in the first paragraph of subsection (2); and substituted "government or state contract" for "government contract" throughout subsection (2).

The 1977 amendment substituted a fee range of \$100 to \$300 in subdivision (1)(c) for a former range of \$15 to \$35; and deleted "and an additional sum to be set by the board to pay the cost of publishing notice of hearing in the legal advertising sections of an appropriate newspaper or newspapers" from the end of subdivision (1)(c).

#### Effective Date

Section 2 of Ch. 179, Laws 1975 provided the act should be in effect after its passage and approval. Approved March 27, 1975.

**8-111. (3847.11) Hearing to consider applications—notice—matters considered—manner of conducting hearings.** (1) Upon the filing of such application by a class A or class B or class C motor carrier, except a class C motor carrier authorized to operate under the terms of a United States government contract, agency or department thereof, the commission shall fix a time and place for hearing thereon, which shall not be less than ten (10) days after the filing. The commission shall cause a copy of the petition and notice of hearing thereon to be served upon an officer or owner of any motor carrier that in the opinion of the commission might be affected by the granting of any such certificate and upon any railroad company operating into or through any town or city located on the proposed route of the applicant, and upon the department of highways, at least ten (10) days before the date of hearing, and any such motor carrier or railroad company, and the department of highways, and the



governing board or boards of any such county, town, or city into or through which the route or service as proposed may extend, and any person or corporation concerned are hereby declared to be interested parties to the proceedings, and may offer testimony for or against the granting of the certificate. Notice of such hearing shall be published in the legal advertising section of a local newspaper or newspapers deemed by the commission to have a circulation sufficient to reach the consuming public in the area under consideration, for applications for class C authority and geographically limited class B authority, and in appropriate newspapers deemed by the commission to have sufficient statewide circulation in the case of applications for class A authority and geographically broad contemplated class B authority. The submission of a class C motor carrier application must be accompanied by the names and addresses of any person, firm, corporation or other legal entity with whom the applicant has executed a contract for the distribution, delivery or collection of wares, merchandise or commodities, or transporting persons. Such contracts must be in writing, executed by the parties and submitted to this commission for examination. The contracting parties must appear and offer testimony in support of the applicant. If after hearing upon application for a certificate, the commission finds, from the evidence, that public convenience and necessity require the authorization of the service proposed, or any part thereof as the commission shall determine, a certificate therefor shall be issued. In determining whether a certificate should be issued, the commission shall give reasonable consideration to the transportation service being furnished or that will be furnished by any railroad, or other existing transportation agency, and shall give due consideration to the likelihood of the proposed service being permanent and continuous throughout twelve (12) months of the year and the effect which the proposed transportation service may have upon other forms of transportation service which are essential and indispensable to the communities to be affected by such proposed transportation service or that might be affected thereby. However an application by a class A or a class B or a class C motor carrier for a certificate may be disallowed without a public hearing thereon when it appears from the records of the commission that the route or territory sought to be served by the applicant has previously been made the basis of a public investigation and finding by the commission that public convenience and necessity do not require the proposed motor carrier service unless it is made to affirmatively appear in the application by a recital of the facts that conditions obtaining over the route or in the territory and affecting transportation facilities therein have materially changed since said public investigation and finding and that public convenience and necessity do now require the motor carrier operation.

(2) Any investigation, inquiry or hearing which the commission has power to undertake or to hold, under the provisions of this act, may be undertaken or held by or before any member of the commission, or by and before any agent or examiner of the commission designated for the purpose by the commission, and every finding, order, or decision made by a member of the commission, or agent or examiner of the commission so designated, together with a statement in writing of the reasons therefor



which statement must be included in the finding, or order or decision, pursuant to the investigation, inquiry or hearing, when approved and confirmed by the commission and ordered filed in its office, shall be considered the finding, order, or decision of the commission. An agent or examiner of the commission designated as aforesaid, may administer oaths, examine witnesses, and receive evidence.

**History:** En. Sec. 11, Ch. 184, L. 1931; amd. Sec. 1, Ch. 101, L. 1955; amd. Sec. 2, ch. 69, L. 1971; amd. Sec. 1, ch. 339, L. 1973; amd. Sec. 4, Ch. 243, L. 1974; amd. Sec. 3, Ch. 315, L. 1974.

#### Compiler's Notes

This section was amended twice in 1974, once by Ch. 243 and once by Ch. 315. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

#### Amendments

The 1971 amendment inserted "except a class C motor carrier authorized to operate under the terms of a United States government contract, agency or department thereof" in the first sentence of subsection (1).

The 1973 amendment inserted the fourth, fifth and sixth sentences in subsection (1).

Chapter 243, Laws of 1974 inserted the provision for publication of notice of the hearing in subsection (1).

Chapter 315, Laws of 1974, inserted the subsection designations (1) and (2) at the beginning of the first and second paragraphs; substituted "department of highways" for "state highway commission" in two places in the second sentence of subsection (1); substituted references to the "commission" throughout the section for references to the "board"; and made minor changes in phraseology.

#### Effective Date

Section 2 of Ch. 339, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 17, 1973.

### 8-111.1. Time for hearing and issuance of finding, order or decision.

All applications for certificates of public convenience and necessity as class A, class B, or class C carriers, except class C carriers operating pursuant to the terms and conditions of a United States government contract, agency or department, filed by motor carriers before the commission must be set for hearing at a date and time certain, which said date of hearing must be not more than sixty (60) days after the date of filing of said application before said commission, and the commission must issue its finding, order or decision on said application and the evidence presented in support thereof at the time of said hearing within ninety (90) days from and after the said date of the filing of said application.

**History:** En. Sec. 1, Ch. 102, L. 1955; amd. Sec. 3, Ch. 69, L. 1971; amd. Sec. 20, Ch. 315, L. 1974.

The 1974 amendment substituted "commission" for "board of railroad commissioners" and "board" throughout the section.

#### Amendments

The 1971 amendment inserted "except class C carriers operating pursuant to the terms and conditions of a United States government contract, agency or department" near the beginning of the section.

#### Effective Date

Section 4 of Ch. 69, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 27, 1971.

### 8-112. (3847.12) Authorization of board required for transfer of privilege, etc.

#### Attachment of Terms and Conditions

Under this section and section 8-103 board of railroad commissioners is authorized, and has duty, to administratively supervise every motor carrier in state and

may, in its discretion, upon issuance of any certificate, attach such terms and conditions as in its judgment may be required. *Walter v. Board of Railroad Commrs.*, 153 M 384, 457 P 2d 479.

**8-114. (3847.14) Manner of procedure—enforcement of orders of commission.****Compiler's Notes**

Section 20, Ch. 315, Laws 1974, substituted "commission" throughout this section

for "board of railroad commissioners" and "board."

**8-115. (3847.15) Repealed.****Repeal**

Section 8-115 (Sec. 15, Ch. 184, L. 1931), relating to provisions for review of orders

of board, was repealed by Sec. 24, Ch. 315, Laws of 1974.

**8-116. (3847.16) Annual fee for motor carriers—fee for seasonal operators—compliance required of motor carriers operating in more than one state—revocation of certificate for failure to pay fees—lien of fees and charges.** (a) In addition to all of the licenses, fees or taxes imposed upon motor vehicles in this state, and in consideration of the use of the public highways of this state, every motor carrier, as defined in this act, shall, at the time of the issuance of a certificate and annually thereafter, on or between the first day of January and the fifteenth day of January, of each calendar year, pay to the public service commission of the state of Montana the sum of five dollars (\$5), for every motor vehicle operated by the carrier over or upon the public highways of this state.

Provided, that a motor carrier engaged in seasonal operations only, where its said operations do not extend continuously over a period of not to exceed six (6) months in any calendar year, shall only be required to pay compensation and fees in a sum equal to one-half ( $\frac{1}{2}$ ) of the compensation and fees herein provided, and, provided further, that the compensation and fees herein imposed shall not apply to motor vehicles maintained and used by a motor carrier as standby or emergency equipment. The commission shall have the power and it is hereby made its duty to determine what motor vehicles shall be classed as standby or emergency equipment.

(b) When transportation service is rendered partly in this state and partly in an adjoining state or foreign country, motor carriers shall comply with the provisions of this act relating to the payment of compensation and to the making of annual or special reports or statements herein required, and shall show the total business performed within the limits of this state and such other information concerning its operation within this state as may be required by the commission as fully and completely and in the same manner as herein required of motor carriers operating wholly within this state.

(c) Upon the failure of any motor carrier to pay such compensation, when due, the commission may in its discretion revoke the carrier's certificate or privilege and no carrier whose certificate or privilege is so revoked shall again be authorized to conduct such business until such compensation shall be paid.

(d). \* \* \* [Same as parent volume.]

**History:** En. Sec. 16, ch. 184, L. 1931; amd. Sec. 1, ch. 473, L. 1973.

**Amendments**

The 1973 amendment, near the end of the first paragraph in subsection (a),



changed the time for the issuance of the certificate from the period between the first and fifteenth of July to the period between the first and fifteenth of January; reduced the fee from ten dollars to five dollars near the end of the first paragraph in subsection (a); and substituted references to the public service commission for the board of railroad commissioners throughout the section.

#### Effective Date

Section 2 of Ch. 473, Laws 1973 provided

the act should be in effect from and after its passage and approval. Approved March 27, 1973.

#### Motor Vehicle—What Constitutes

For purposes of subsection (a) of this section, the term "motor vehicle" does not include dollies, trailers or semitrailers, and the definition found in section 8-101(6) is invalid because in conflict with federal law. *State ex rel. Sammons Trucking, Inc. v. Bollinger*, — M —, 544 P 2d 1235.

### DECISIONS UNDER FORMER LAW

#### Constitutionality

The imposition of the ten-dollar fee on motor vehicles engaged in interstate commerce conflicts with federal law (P.L. 89-170) and regulations thereunder; the state may impose a fee no greater than

the five dollars per vehicle permitted by federal regulations. *State ex rel. Sammons Trucking Inc. v. Boedecker*, 158 M 397, 492 P 2d 919, distinguishing *Aero Mayflower Transit Co. v. Board of Railroad Commrs.*, 332 US 495, 92 L Ed 99, 68 S Ct 167.

### 8-117. (3847.17) Repealed.

#### Repeal

Section 8-117 (Sec. 17, Ch. 184, L. 1931), relating to the composition and use of the

motor carrier fund, was repealed by Sec. 24, Ch. 315, Laws of 1974.

**8-118. (3847.18) Records of motor carriers to be open for inspection by commission—system of accounts to be prescribed—reports required.** All records, books, accounts and files of every class A and class B motor carrier in this state, so far as the same shall relate to the business of transportation conducted by such motor carrier, shall at all times be subject to examination by the commission or by any authorized agent or employee of the commission. The commission shall prescribe a uniform system of accounts and uniform reports covering the operations of such class A and class B motor carriers and every motor carrier authorized to operate as such in accordance with the provisions of this act shall keep its records, books, and accounts according to such uniform system, in so far as possible. On or before March 31 of each year, every motor carrier authorized to engage in such business shall file with the commission a report, under oath, on a form prescribed and furnished by the commission. Those carriers filing an annual report with the interstate commerce commission shall, in addition to filing the report prescribed by the public service commission, submit to the public service commission a copy of the annual report filed with the interstate commerce commission. In addition to such annual reports every motor carrier shall prepare and file with the commission, at the time or times and in the form to be prescribed by the commission, annual reports, special reports, and statements giving to the commission such information as it shall require in order to perform its duties under this act.

**History:** En. Sec. 18, Ch. 184, L. 1931; amd. Sec. 1, Ch. 232, L. 1973; amd. Sec. 4, Ch. 472, L. 1977.

#### Amendments

The 1973 amendment changed the date for filing of a report with the board from July 15 to March 31.

The 1977 amendment substituted "commission" for "board" throughout the section; added "on a form prescribed and furnished by the commission" to the end of the third sentence; inserted the fourth sentence; and made minor changes in phraseology and punctuation.



**Effective Date**

Section 2 of Ch. 232, Laws 1973 provided the act should be in effect from and

after its passage and approval. Approved March 8, 1973.

**8-119. (3847.19) Penalties for violations.** Any motor carrier, subject to the provisions of this act, or, whenever any such motor carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or persons acting for or employed by such corporation, or any person, corporation, association, or partnership, or officer, agent or employee thereof, or any broker of property or officer, agent or employee thereof, who violates or fails to comply with or who procures, aids or abets in the violation of any provision of this act, or who fails to obey, observe, or comply with any lawful order, decision, rule or regulation, direction, demand, or requirement of the board, or any part of provisions thereof, shall:

(a) be subject to a civil penalty to be collected and deposited to the general fund by the board after notice and hearing in an amount not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500) for the first offense, and not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each subsequent offense; or

(b) be subject, upon conviction in a justice court, to a fine of not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500) for the first offense, and not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each subsequent offense.

**History:** En. Sec. 19, Ch. 184, L. 1931; amd. Sec. 2, Ch. 204, L. 1963; amd. Sec. 1, Ch. 209, L. 1967; amd. Sec. 1, Ch. 68, L. 1971; amd. Sec. 1, Ch. 282, L. 1977.

sand dollars (\$1,000) for each subsequent offense" in subdivision (b).

The 1977 amendment substituted "be subject, upon conviction in a justice court, to" at the beginning of subdivision (b) for "be deemed guilty of a misdemeanor and shall, upon conviction thereof, be punished by"; and deleted "or by imprisonment in the county jail for a period of not more than thirty (30) days, or by both such fine and imprisonment" from the end of subdivision (b).

**Amendments**

The 1971 amendment inserted subdivision (a); designated the language in the latter part of the former section as subdivision (b); and inserted "for the first offense, and not less than one hundred dollars (\$100) nor more than one thou-

**8-120. (3847.20) Repealed.**

**Repeal**

Section 8-120 (Sec. 20, Ch. 184, L. 1931), relating to continuation of business by

motor carriers already licensed, was repealed by Sec. 24, Ch. 315, Laws of 1974.

**8-126. Fees required for filing various documents.** (1) The public service commission shall, except as otherwise provided by law, require and receive fees before filing annual reports, tariffs, schedules, and supplements of these and shall require and receive fees for copies of orders, documents, classifications, blank forms, and other instruments prepared by it or on file in its office, unless provided by law to be furnished free of charge, under the following schedule:

- (a) Filing annual reports, each .....\$ 5.00
- (b) Filing tariffs, time schedules and supplements thereto, each 2.00

(c) For issuing certificates of public convenience and necessity to motor carriers, each .....	2.00
(d) Classification for public utilities, each .....	1.50
(e) Classification for motor carriers, each .....	.50
(f) For a copy of the rules for motor carriers and blank forms of annual reports for utilities and common carriers .....	Cost

(2) The commission shall require and receive an additional sum to be set by the commission to pay the cost of publishing such notice of hearing as may be required by this chapter except for notice published pursuant to 8-108, 8-109, or 8-110.

(3) This section does not require or authorize the public service commission to collect fees for the filing of annual reports, tariffs, schedules, and supplements of these which relate solely to interstate commerce.

**History:** En. Sec. 1, Ch. 100, L. 1935; amd. Sec. 1, Ch. 73, L. 1947; amd. Sec. 1, Ch. 67, L. 1971; amd. Sec. 4, Ch. 315, L. 1974; amd. Sec. 5, Ch. 472, L. 1977.

The 1974 amendment deleted "board of railroad commissioners" before "public service commission" at the beginning of subsections (1) and (2); and made minor changes in phraseology, punctuation and style.

#### Amendments

The 1971 amendment changed the fee for a copy of rules and regulations for motor carriers from 25 cents to cost.

The 1977 amendment inserted subsection (2); and redesignated former subsection (2) as subsection (3).

**8-127. (3847.27) Additional fees covering motor carriers.** In addition to all other licenses, fees and taxes imposed upon motor vehicles in this state and in consideration of the use of the highways of this state, every motor carrier holding a certificate of public convenience and necessity or permit issued by the commission, shall between the first and fifteenth days of January, April, July and October of each year, file with the commission a statement showing the gross operating revenue of such carrier for the preceding three (3) months of operation, or portion thereof, and shall pay to the commission a fee of five hundred seventy-five thousandths (.575) of one (1) per cent of the amount of such gross operating revenue; and such tax shall be effective for the taxable year commencing April 1, 1969, and also for each taxable year thereafter; and in the event that such carrier operates in interstate commerce, the gross operating revenue of such carrier within this state shall be deemed to be all the revenue received from business beginning and ending within this state, and a proportion based upon the proportion of the mileage within this state to the entire mileage over which the business is done of revenue on all business passing through, into or out of this state; provided, however, that the minimum fee which shall be paid by each class A and class B carrier for each vehicle registered and/or operated under the provisions of the Motor Carrier Act shall be thirty dollars (\$30) and the minimum annual fee which shall be paid by each class C carrier for each vehicle registered and/or operated under the Motor Carrier Act shall be fifteen dollars (\$15); provided, however, that the minimum annual fee provided by this section shall not apply to either new or used vehicles operated under their own power where such vehicle is being delivered to a dealer and will only be transported once.



**History:** En. Sec. 2, Ch. 100, L. 1935; amd. Sec. 2, Ch. 73, L. 1947; amd. Sec. 1, Ch. 162, L. 1951; amd. Sec. 1, Ch. 6, Ex. L. 1969; amd. Sec. 1, Ch. 383, L. 1971; amd. Sec. 20, Ch. 315, L. 1974.

#### Amendments

The 1969 amendment inserted a proviso increasing the fee from .5% to .575% for the biennium commencing April 1, 1969.

The 1971 amendment made the increase to .575% permanent and made minor changes in style.

The 1974 amendment substituted "commission" for "board of railroad commissioners" and "board" throughout the section.

#### Repealing Clause

Section 2 of Ch. 6, Ex. Laws 1969 read "Section 8-128, R. C. M. 1947, is repealed."

#### Effective Date

Section 3 of Ch. 6, Ex. Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 19, 1969.

### 8-128. (3847.28) Repealed.

#### Repeal

Section 8-128 (Sec. 3, Ch. 100, L. 1935), relating to the disposition of fees collected

Section 2 of Ch. 383, Laws 1971 read "This act is effective on April 1, 1971."

#### Unconstitutional Tax

Revenue collected by the public service commission under this section constitutes an unconstitutional levy under Article III, section 27, of the 1889 Constitution and the Fourteenth Amendment of the Constitution of the United States in that said levy denies those subject to the tax uniformity of taxation, is discriminatory, confiscatory, prohibitive, arbitrary, and is a tax on the privilege of doing business. *Garrett Freightlines, Inc. v. Montana Railroad & Public Service Comm.*, — M —, 507 P 2d 1040.

Determination of tax under this section, since it is based upon the income-producing ability of a vehicle in interstate commerce rather than upon the use of the highway, is not a tax on the use of the highway but a tax on the privilege of doing business, placing a burden on interstate commerce contrary to the Commerce Clause of the United States Constitution. *Garrett Freightlines, Inc. v. Montana Railroad & Public Service Comm.*, — M —, 507 P 2d 1040.

from motor carriers, was repealed by Sec. 2, Ch. 6, Ex. Laws 1969.

### 8-129. Commission may compel carrier bus lines to furnish service.

#### Compiler's Notes

Section 20, Ch. 315, Laws 1974, substituted "commission" in this section for

"board of railroad commissioners."

### 8-130. (3847.29) Repealed.

#### Repeal

Section 8-130 (Sec. 2, Ch. 133, L. 1943), granting the board authority to grant tem-

porary certificates, was repealed by Sec. 2, Ch. 148, Laws 1971.

**8-131. Temporary authority for service—duration—extension.** To enable the provision of service for which there is an immediate and urgent need to a point or points or within a territory having no carrier service capable of meeting such need, the public service commission may, in its discretion, upon affidavits or such other evidence as it may deem sufficient, and without hearings or other proceedings, grant temporary authority for such service by a common carrier by motor vehicle or a contract carrier by motor vehicle, as the case may be. Such affidavits or other evidence as the commission may determine must accompany the application for temporary authority. The affidavits or other evidence must specify in detail the reason for supporting the application for temporary authority and the term within which the temporary authority would be required. Such temporary authority, unless suspended or revoked for good cause, shall be valid for such time as the commission shall specify, but for not more than ninety (90) days.



Temporary authority initially granted pursuant to the provisions hereof may be extended by the commission without hearings or other proceedings, but in no case shall a grant of temporary authority, with extensions, exceed an aggregate of one hundred twenty (120) days. Neither the granting of temporary authority nor operation thereunder shall create any presumption that corresponding permanent authority will be granted thereafter. Transportation service rendered under such temporary authority shall be subject to all applicable provisions of the Motor Carrier Act and to the rules, regulations and requirements of the commission thereunder.

**History:** En. Sec. 1, Ch. 148, L. 1971; amd. Sec. 1, Ch. 231, L. 1973; amd. Sec. 20, Ch. 315, L. 1974.

#### Title of Act

An act authorizing the board of railroad commissioners of the state of Montana to grant temporary motor carrier authority in cases of immediate and urgent need; prescribing the maximum periods thereof; and repealing section 8-130 of the Revised Codes of Montana, 1947.

#### Amendments

The 1973 amendment substituted "public service commission" for "board of rail-

road commissioners"; and inserted the second and third sentences.

The 1974 amendment substituted "commission" for "board" throughout the section.

#### Repealing Clause

Section 2 of Ch. 148, Laws 1971 read "Section 8-130, R.C.M., 1947, is hereby repealed."

#### Effective Date

Section 2 of Ch. 231, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 8, 1973.

**8-132. Purpose.** The purpose of this bill is to establish a system to enforce provisions of the Motor Carrier Act that will:

(1) Authorize the department of highways, gross vehicle weight division, and the department of justice, highway patrol bureau, to enforce provisions of the Motor Carrier Act in cooperation with the public service commission, transport division;

(2) Increase the level of enforcement coverage available without increasing the budget or appropriations required by any agency; and

(3) Allow for analysis of the program and recommendations to the legislature by the public service commission.

**History:** En. 8-132 by Sec. 1, Ch. 280, L. 1977.

#### Title of Act

An act to authorize employees of the department of highways who enforce motor transport weight and safety laws, and officers of the highway patrol, to also en-

force provisions of the public service commission law regarding types of commodities carried, etc.; requiring the public service commission, the highway patrol bureau, and department of highways to cooperate to reduce duplication of enforcement effort; and amending sections 31-110 and 32-1126, R. C. M. 1947.

## CHAPTER 2—PIPELINE CARRIERS OF OIL—REGULATION

### Section

8-201.1. Commission defined.

**8-201.1. Commission defined.** Unless the context requires otherwise, in this chapter "commission" means the public service commission, provided for in section 82A-1702.

**History:** En. 8-201.1 by Sec. 5, Ch. 315, L. 1974.

**Title of Act**

An act for revision of the laws relating to the department of public service regulation.

**8-202 to 8-207.**

**Compiler's Notes**

Section 20, Ch. 315, Laws 1974, substituted "commission" throughout these sec-

tions for "board of railroad commissioners."

**8-209, 8-210.**

**Compiler's Notes**

Section 20, Ch. 315, Laws 1974, substi-

tuted "commission" in these sections for "board of railroad commissioners."

**CHAPTER 8—COMMON CARRIERS OF PERSONS, PROPERTY AND MESSAGES, THEIR RIGHTS AND OBLIGATIONS**

**Section**

8-812.1. Liability of inland carriers for loss.

8-812.2. Liability between carriers.

**8-812. (7867) Repealed.**

**Repeal**

Section 8-812 (Sec. 2910, Civ. C. 1895; Sec. 1, Ch. 139, L. 1974), relating to liabil-

ity of inland carriers for loss, was repealed by Sec. 3, Ch. 168, Laws 1975. For present provisions, see sec. 8-812.1.

**8-812.1. Liability of inland carriers for loss.** Any common carrier, railroad, or transportation company subject to the provisions of this act receiving property for transportation from a point in Montana to any other point in Montana, shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad or transportation company to which such property may be delivered or over whose line or lines such property may pass within the state of Montana when transported on a through bill of lading, and no contract, receipt, rule, regulation or other limitation of any character whatsoever shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed; and any such common carrier, railroad, or transportation company so receiving property for transportation from a point in Montana to a point in Montana, or any common carrier, railroad, or transportation company delivering said property so received and transported shall be liable to the lawful holder of said receipt or bill of lading or to any party entitled to recover thereon, whether such receipt or bill of lading has been issued or not, for the full actual loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the state of Montana when transported on a through bill of lading, notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any such receipt or bill of lading, or in any contract, rule, regulation, or in any tariff filed with the public service commission; and

any such limitation, without respect to the manner or form in which it is sought to be made is hereby declared to be unlawful and void, except:

- (1) An inherent defect, vice, weakness, or a spontaneous action of the property itself;
- (2) The act of a public enemy of the United States, or of this state;
- (3) The act of the law;
- (4) An irresistible superhuman cause; or
- (5) The act or default of the shipper or owner or for natural shrinkage.

Provided that the provisions hereof respecting liability for full actual loss, damage or injury, notwithstanding any limitation of liability or recovery or representation or agreement or release as to value, and declaring any such limitation to be unlawful and void, shall not apply, first, to baggage carried on passenger trains or buses; second, to property, except ordinary livestock, received for transportation concerning which the carrier shall have been or shall hereafter be expressly authorized or required by order of the public service commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property, in which case such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released, and shall not, so far as related to values, be held to be a violation of this act; and any tariff schedule which may be filed with the commission pursuant to such order shall contain specific reference thereto and may establish rates varying with the value so declared and agreed upon; and the commission is hereby empowered to make such order in cases where rates dependent upon and varying with declared or agreed values would, in its opinion, be just and reasonable under the circumstances and conditions surrounding the transportation. The term "ordinary livestock" shall include all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses.

Provided further, that nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action.

Provided further, that it shall be unlawful for any such receiving or delivering common carrier to provide by rule, contract, regulation, or otherwise, a shorter period for the filing of claims than nine months, and for the institution of suits than two years, such period for institution of suits to be computed from the date when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice.

Provided further, that for the purpose of this section and section 8-812.2, the delivering carrier shall be construed to be the carrier performing the linehaul service nearest to the point of destination.

Provided further, that the liability imposed by this section shall also apply in the case of property reconsigned or diverted in accordance with the applicable tariffs filed as in this part provided.



Provided further, that the consignee within fifteen (15) days after delivery must ask for an inspection of any damaged shipment and the carrier must make an inspection within five (5) working days thereafter.

Provided further, that the consignee shall have the opportunity to examine the condition of the package in which the goods are shipped prior to signing the delivery receipt.

Provided further, that the consignee may detain the driver at consignee's expense not to exceed a minimum charge to be fixed by the public service commission while he examines the shipment for possible concealed damage. During such examination, the freight bill may still be noted as to the extent of the damage or loss, if any. If examination discloses damage, the examination charge may be included in the consignee's claim for damage in proportion to the amount of the claim.

Provided further, that carriers must acknowledge receipt of each claim within thirty (30) days and promptly investigate each claim, and either pay or decline the claim within one hundred twenty (120) days from the date of receipt thereof or provide an explanation for the delay in disposition. An assertion that the claim is still being investigated shall not constitute sufficient explanation.

Provided further, that in the event a claimant or a carrier successfully prosecutes or defends a claim for loss or damage under this section, wherein it is alleged the carrier has not disposed of the claim within one hundred twenty (120) days or explained the delay, and providing further, that the claimant has inquired of the carrier regarding the delay, in writing, within the one hundred twenty (120) day period, then the court exercising jurisdiction may, at its discretion, award reasonable attorney fees to the successful party but not exceed five hundred dollars (\$500).

**History:** En. 8-812.1 by Sec. 1, Ch. 168, L. 1975.

#### **Title of Act**

An act to require carriers to pay claims in full notwithstanding any limitation of liability contained in any contract except as herein provided; to authorize imposition of attorney fees to the successful party where an aggrieved consignee predicates his claim in part upon unjustified

delay in investigation of the same; to permit consignees to inspect packages under certain conditions; to make intrastate carriers liable to the full extent of losses to property covered by them; to allow recourse to delivering carriers who pay consignees' claims; and to adopt appropriate provisions of the Interstate Commerce Act relating to those subjects; repealing section 8-812, R. C. M. 1947.

### **DECISIONS UNDER FORMER LAW**

#### **Jurisdiction**

Former section 8-812 was not applicable to action on part of consignor to recover damages from shipper for careless unloading practices of consignee of grain where shipment by rail originated in Montana

and terminated in Duluth, Minnesota; shipment was in interstate commerce and jurisdiction of subject matter was preempted by 49 U. S. C. § 20(11). *Eisenman Seed Co. v. Chicago, Milwaukee, St. P. & P. R.*, — M —, 505 P 2d 81.

**8-812.2. Liability between carriers.** The common carrier, railroad, or transportation company issuing such receipt or bill of lading, or delivering such property so received and so transported shall be entitled to recover from the common carrier, railroad, transportation company, on whose line the loss, damage or injury shall have been sustained, the amount of such

loss, damage, or injury as it may be required to pay to the owners of such property, as may be evidenced by any receipt, judgment, or transcript thereof, and the amount of any expense reasonably incurred by it in defending any action at law brought by the owners of such property.

**History:** En. 8-812.2 by Sec. 2, Ch. 168, L. 1975.

**Repealing Clause**

Section 3 of Ch. 168, Laws 1975 read "Section 8-812, R. C. M. 1947, is repealed."

**CHAPTER 9—NOTICE OF HEARINGS TO MONTANA CONSUMER COUNSEL**

**Section**

8-901. Notice to be served on consumer counsel.

8-902. Notice to advise public of availability of consumer counsel.

**8-901. Notice to be served on consumer counsel.** In addition to all other forms of notice of hearings conducted by the public service commission provided for in this title, notices of all hearings shall be served upon the Montana consumer counsel.

**History:** En. 8-901 by Sec. 5, Ch. 243, L. 1974.

**Title of Act**

An act amending sections 8-108, 8-109, 8-110 and 8-111, R. C. M. 1947, to finance dissemination of notice of public hearings regarding the public convenience and necessity for granting motor carrier au-

thority; to provide for the publication of such notice in the legal advertising section of appropriate newspapers; and adding two (2) new sections to Title 8, R. C. M. 1947, to provide for the giving of such notice to the Montana consumer counsel; and to make reference to the availability of the Montana consumer counsel in notices of hearings.

**8-902. Notice to advise public of availability of consumer counsel.** All forms of notice of public hearings conducted by the public service commission under this title, including all notices posted in public places or published in the legal advertising sections of newspapers, shall advise members of the consuming public of the existence of the office of the Montana consumer counsel and its availability to function on behalf of members of the consuming public.

**History:** En. 8-902 by Sec. 6, Ch. 243, L. 1974.

## TITLE 9—CEMETERIES

### Chapter

1. Cemetery associations—incorporation of, 9-107, 9-111, 9-111.1, 9-119, 9-128, 9-131, 9-132.
2. Public Cemetery District Act, 9-207, 9-209, 9-227.
4. Joint establishment of cemeteries by counties and cities, 9-401.
8. Dedication of mausoleum or columbarium property—plats—property rights in plots, 9-804.
9. Endowment care funds of mausoleums and columbariums, 9-921.
10. Mausoleums and columbariums—penalties and miscellaneous provisions, 9-1003, 9-1004, 9-1006, 9-1013.

### CHAPTER 1—CEMETERY ASSOCIATIONS—INCORPORATION OF

#### Section

- 9-107. Powers and duties of trustees—officers.
- 9-111. Association may take land by purchase or gift—use of personal property gifts.
- 9-111.1. Local government approval—need—financial responsibility.
- 9-119. Transfer of lots.
- 9-128. Transfer of funds.
- 9-131. Investment of fund.
- 9-132. Compensation of trustees.

**9-107. (6475) Powers and duties of trustees—officers.** The affairs and property of the association shall be managed by the trustees, a majority of whom is a quorum for the transaction of business. The trustees shall annually appoint from among their number a president, vice-president, secretary, and treasurer who shall hold their offices during the pleasure of the board of trustees. The trustees may require the treasurer to give security for the faithful performance of the duties of his office.

**History:** En. Sec. 7, Ch. 18, L. 1905; re-en. Sec. 4243, Rev. C. 1907; re-en. Sec. 6475, R. C. M. 1921; amd. Sec. 1, Ch. 62, L. 1977.

#### Amendments

The 1977 amendment substituted "is a quorum" for "shall form a board" near the end of the first sentence; and made minor changes in phraseology and punctuation.

**9-111. (6479) Association may take land by purchase or gift—use of personal property gifts.** Any association incorporated agreeably to the provisions of this act may take by purchase or gift, and hold, within the county in which the certificate of their incorporation is recorded, land to be held and occupied exclusively for a cemetery for the burial of the dead, and for purposes necessary or proper thereto; such land, or such portion thereof as may from time to time be required for that purpose, shall be surveyed and divided into lots of such size as the trustees may direct, with such avenues, alleys and walks as the said trustees deem proper; and a map of such survey shall be filed and recorded in the office of the county clerk and recorder of the county in which the lands lie, without any fees therefor. Such association may also take by gift and hold personal property, and may sell the same and apply the proceeds thereof to the care, maintenance and embellishment of said cemetery, but for no other purpose, and all real and personal estate which shall have been



given or granted to any such association for the maintenance of any monument, the keeping in good order, or the embellishment of any lot or ground situated within the inclosure of such an association, shall remain forever to the uses for which the same shall have been given or granted, according to the true intent of the grantor. Any city or town in or near which a cemetery is maintained under the provisions of this act, may furnish water to be used within such cemetery and for its maintenance and beautification free of charge to such cemetery association if such city or town shall so elect.

**History:** En. Sec. 11, Ch. 18, L. 1905; re-en. Sec. 4247, Rev. C. 1907; re-en. Sec. 6479, R. C. M. 1921; amd. Sec. 1, Ch. 98, L. 1939; amd. Sec. 1, Ch. 78, L. 1947; amd. Sec. 1, Ch. 98, L. 1974.

#### Amendments

The 1974 amendment deleted "not exceeding three hundred and twenty (320) acres of" before "land" in the first clause of the first sentence.

### 9-111.1. Local government approval — need — financial responsibility.

Before commencing operations under this chapter, an association shall comply with the planning and zoning requirements of the city or county, or the city and county jointly, as may be required by law, and shall demonstrate to such unit or units of local government that a need exists for the proposed cemetery and that the association has the financial capability required to operate a cemetery in a satisfactory manner.

**History:** En. 9-111.1 by Sec. 2, Ch. 98, L. 1974.

the operation and financial management of cemeteries, and amending sections 9-111, 9-128, 9-131, 9-132, 9-227, and 9-921, R. C. M. 1947.

#### Title of Act

An act revising the statutes governing

**9-119. (6487) Transfer of lots.** (1) Whenever the lands of such an association are laid out in lots and the lots or any of them are transferred to individual proprietors and there has been an interment in a lot so transferred, that lot from the time of such interment shall forever be inalienable and shall, upon the death of the proprietor, descend to his heirs. However, any one or more of those heirs may release to any other of the heirs his or their interest in the lot. A copy of the release shall be filed with the secretary of the association or with the county clerk and recorder of the county within which the lot is situated. Except by consent of all persons having an interest in the lot, the body of a deceased person may not be interred in that lot unless it is the body of:

- (a) a person having an interest in that lot at the time of his decease;
- (b) a relative of some person having such interest;
- (c) the wife or husband of such a person; or
- (d) a relative of such husband or wife.

(2) However, the person or persons in whom the title to such lot or lots or part thereof is vested may at any time sell, convey, and release the lots or parts thereof to the cemetery association maintaining the cemetery in which the lots are situated. A copy of the instruments of such conveyance shall be filed in the same manner provided for release from one heir to another. The cemetery association may use any funds under its control for such purposes and shall hold and may convey such lots or parts

thereof to other purchasers in the same manner and with the same effect as it holds and conveys any other of its cemetery lots. This proviso does not allow or authorize the conveyance to the cemetery association of a piece of ground in which the body of a deceased person lawfully interred actually remains interred at the time of the attempted conveyance.

**History:** En. Sec. 19, Ch. 18, L. 1905; re-en. Sec. 4255, Rev. C. 1907; re-en. Sec. 6487, R. C. M. 1921; amd. Sec. 2, Ch. 62, L. 1977.

#### Amendments

The 1977 amendment inserted the subsection and subdivision designations; sub-

stituted "may" for "shall have power to" twice in the third sentence of subsection (2); deleted "by persons invested with the title thereto" after "authorize the conveyance" in the fourth sentence of subsection (2); and made minor changes in phraseology and punctuation.

**9-128. (6496) Transfer of funds.** From and after the passage and approval of this act, the trustees of such cemetery association as are mentioned in section 9-121 shall provide by resolution, spread upon the minutes of such association, for the transfer to the trustees of such "permanent care and improvement fund," of not less than fifteen per cent of the moneys received from the sale of cemetery lots by said association, together with all moneys theretofore or thereafter received from the owners of lots for the care of such lots; and such transfer of any such funds then on hand shall then and there be made; such transfers shall be made thereafter quarterly, upon the first days of January, April, July, and October of each year, to the trustees of such fund. If at any time there shall remain in the hands of such association unexpended money, over and above the liabilities of the association, the board of trustees of such association may, by a two-thirds vote, appropriate the whole or any portion of such unexpended moneys to such "permanent care and improvement fund."

**History:** En. Sec. 28, Ch. 18, L. 1905; re-en. Sec. 4264, Rev. C. 1907; amd. Sec. 4, Ch. 128, L. 1909; re-en. Sec. 6496, R. C. M. 1921; amd. Sec. 3, Ch. 98, L. 1974.

#### Amendments

The 1974 amendment substituted "not

less than fifteen per cent" for "not less than fifteen nor more than forty per cent" before "of the moneys received" in the first sentence; and deleted a final proviso that the fund shall not exceed five thousand dollars per acre of the cemetery to be cared for.

**9-131. (6499) Investment of fund.** The principal of such fund may be invested in the way in which public employees' retirement funds are permitted to be invested in the state of Montana as prescribed by section 79-310, and not otherwise; provided that each investment made by the trustee or by the board of trustees shall be subject to the approval of the board of trustees of the cemetery association.

**History:** En. Sec. 31, Ch. 18, L. 1905; re-en. Sec. 4267, Rev. C. 1907; re-en. Sec. 6499, R. C. M. 1921; amd. Sec. 8, Ch. 98, L. 1939; amd. Sec. 4, Ch. 98, L. 1974.

#### Amendments

The 1974 amendment substituted "public

employees' retirement funds" for "trust funds"; inserted "as prescribed by section 79-310" after "state of Montana"; and deleted "and also by the district judge of the county in which the cemetery is situated" after "cemetery association."

**9-132. (6500) Compensation of trustees.** The trustee or the members of the board of trustees of such permanent care and improvement fund

shall receive such compensation as may be agreed upon between such trustee or between such board of trustees of such permanent care and improvement fund on the one hand and the board of trustees of the cemetery association on the other. The fees of such trustee or of the members of the board of trustees shall be paid out of the general fund of the cemetery association until such trust fund shall reach ten thousand dollars (\$10,000) and thereafter the same shall be paid out of the income of such fund.

**History:** En. Sec. 32, Ch. 18, L. 1905; re-en. Sec. 4268, Rev. C. 1907; re-en. Sec. 6500, R. C. M. 1921; amd. Sec. 9, Ch. 98, L. 1939; amd. Sec. 5, Ch. 98, L. 1974.

that the total compensation of such trustee or of the entire board of trustees shall in no case exceed the sum of one hundred dollars (\$100.00) per annum" from the end of the first sentence.

#### **Amendments**

The 1974 amendment deleted "provided

### **CHAPTER 2—PUBLIC CEMETERY DISTRICT ACT**

#### **Section**

9-207. Government of district—appointment and terms of trustees.

9-209. Budget and tax levy.

9-227. Investment of principal.

#### **9-207. Government of district—appointment and terms of trustees.**

Said cemetery district shall be governed and managed by three (3) trustees, appointed by the board of county commissioners. The trustees may be appointed from the freeholders residing within said district for terms of one (1), two (2) and three (3) years respectively, and until their successors shall be appointed and qualified. Annually thereafter the board of county commissioners shall appoint one trustee for a term of three (3) years or until his successor shall be appointed and qualified. The trustees at their first meeting shall adopt bylaws for the government and management of the district. Per diem and mileage of such cemetery trustees may be set by resolution of the board of county commissioners.

**History:** En. Sec. 7, Ch. 221, L. 1943; amd. Sec. 7, Ch. 16, L. 1945; amd. Sec. 1, Ch. 7, L. 1975.

be appointed" for "shall be appointed" in the second sentence; substituted the final sentence, providing per diem and mileage expenses of the commissioners, for "They shall serve without pay."

#### **Amendments**

The 1975 amendment substituted "may

**9-209. Budget and tax levy.** The board of cemetery trustees shall annually present a budget to the board of county commissioners at the regular budget meetings as prescribed by law. The board of county commissioners must annually, at the time of levying county taxes, fix and levy upon all property within said cemetery district, sufficient to raise the amount certified by the board of cemetery trustees to be raised by a tax on the property of said district. The tax so levied shall not exceed 4 mills on each dollar of taxable valuation on the property of said district. Expenditures made, liabilities incurred, or warrants issued by or in behalf of any cemetery district in excess of the annual budget presented to the board of county commissioners as provided herein and the amount appropriated for and authorized to be expended for each item in the budget



shall not be a liability of the cemetery district. Insofar as the same can be made applicable, the county budget system, 16-1901 to 16-1911, shall govern the operation of cemetery districts created under this act.

**History:** En. Sec. 9, Ch. 221, L. 1943; amd. Sec. 9, Ch. 16, L. 1945; amd. Sec. 1, Ch. 93, L. 1951; amd. Sec. 1, Ch. 4, L. 1955; amd. Sec. 1, Ch. 74, L. 1977.

#### Amendments

The 1977 amendment increased the tax levy in the third sentence from 2 to 4 mills; and made minor changes in style.

**9-227. Investment of principal.** The principal of such fund may be invested in the way in which public employees' retirement funds are permitted to be invested in the state of Montana and not otherwise; provided that each investment made by the trustee or by the board of trustees shall be subject to the approval of the board of trustees of the public cemetery district.

**History:** En. Sec. 12, Ch. 165, L. 1955; amd. Sec. 6, Ch. 98, L. 1974.

#### Amendments

The 1974 amendment substituted "public

employees' retirement funds" for "trust funds" and deleted "and also by the district judge of the county in which the cemetery is situated" after "public cemetery district."

## CHAPTER 4—JOINT ESTABLISHMENT OF CEMETERIES BY COUNTIES AND CITIES

### Section

**9-401.** Power of county commissioners to conduct cemeteries—joint conduct of cemeteries.

**9-401. (4514) Power of county commissioners to conduct cemeteries—joint conduct of cemeteries.** The board of county commissioners of any county within the state of Montana is hereby given jurisdiction and power to establish and conduct cemeteries, and to acquire lands for said purpose by purchase, condemnation, gift, or devise, and also to acquire by purchase, condemnation, gift, or devise, cemeteries already established and conducted by persons, firms, or corporations including municipal corporations and are also given jurisdiction and power to establish and conduct cemeteries jointly with any incorporated city or town in such county, and jointly with any incorporated city or town, to acquire and conduct cemeteries already established or conducted by any person, firm, or corporation including municipal corporations; provided, that nothing herein contained will permit the interment of bodies of deceased persons in any such cemetery so condemned and taken over as are, under the articles of incorporation or bylaws of such cemetery association or corporation, debarred from burial therein.

**History:** En. Sec. 1, Ch. 39, L. 1919; re-en. Sec. 4514, R. C. M. 1921; amd. Sec. 1, Ch. 172, L. 1974.

#### Amendments

The 1974 amendment deleted "outside

of the corporate limits of any city or town" after "establish and conduct cemeteries" near the beginning of the section; and substituted "including" for "other than" before "municipal corporations" in two places later in the section.

## CHAPTER 8—DEDICATION OF MAUSOLEUM OR COLUMBARIUM PROPERTY—PLATS—PROPERTY RIGHTS IN PLOTS

### Section

**8-204** Amended map or plat.

**9-804. Amended map or plat.** Any part or subdivision of the property so mapped and plotted may, by order of the directors, be resurveyed and altered in shape and size and an amended map or plat filed, so long as the change does not disturb the interred remains of any deceased person.

**History:** En. Sec. 59, Ch. 35, L. 1949;  
amd. Sec. 3, Ch. 62, L. 1977.

#### Amendments

The 1977 amendment substituted "Any part or subdivision" for "Any part of subdivision" at the beginning of the section; and made a minor change in phraseology.

## CHAPTER 9—ENDOWMENT CARE FUNDS OF MAUSOLEUMS AND COLUMBARIUMS

### Section

9-921. Investment of fund.

**9-921. Investment of fund.** The endowment care funds shall be invested, reinvested and kept invested in securities which are legal investments for public employees' retirement funds under the laws of the state of Montana whenever moneys are received by any corporation or association for merchandise sold by such corporation or association for future delivery, a merchandise trust fund shall be established and the wholesale cost of said merchandise deposited therein. The trustees shall administer this trust fund in accordance with this chapter. Upon delivery of said merchandise to the purchaser, the moneys on deposit therefor shall be paid to the corporation or association.

**History:** En. Sec. 109, Ch. 35, L. 1949;  
amd. Sec. 7, Ch. 98, L. 1974.

#### Amendments

The 1974 amendment substituted "public

employees' retirement funds" for "trust funds" and rewrote the section beginning with "whenever moneys are received." For prior version, see parent volume.

## CHAPTER 10—MAUSOLEUMS AND COLUMBARIUMS—PENALTIES AND MISCELLANEOUS PROVISIONS

### Section

9-1003. Attachment of remains—misdemeanor.

9-1004. Destruction or mutilation of mausoleum or columbarium—interference with interment—misdemeanor.

9-1006. Exceptions.

9-1013. Construction in violation of act a public nuisance—penalty.

**9-1003. Attachment of remains—misdemeanor.** A person who arrests, attaches, detains, or claims to detain any human remains for any debt or demand or upon any pretended lien or charge is guilty of a misdemeanor.

**History:** En. Sec. 22, Ch. 35, L. 1949;  
amd. Sec. 4, Ch. 62, L. 1977.

#### Amendments

The 1977 amendment deleted "high" before "misdemeanor" at the end of the section; and made minor changes in phraseology and punctuation.

**9-1004. Destruction or mutilation of mausoleum or columbarium—interference with interment—misdemeanor.** (1) A person is guilty of criminal mischief and is punishable as provided in 94-6-102 who without right knowingly does any of the following:

(a) destroys, cuts, mutilates, effaces, or otherwise injures, tears down, or removes a crypt, niche, monument, memorial, or marker in a mausoleum or columbarium or a gate, door, fence, wall, post, or railing or an inclosure for the protection of a crypt or niche or any other property in a mausoleum or columbarium;

(b) destroys, cuts, breaks, removes, or injures a building, statuary, ornamentation, tree, shrub, flower, or plant within a mausoleum or columbarium or within the limits of any grounds within which a mausoleum or columbarium is located.

(2) A person is guilty of a misdemeanor who without right knowingly disturbs, obstructs, detains, or interferes with a person carrying or accompanying human remains to a mausoleum, columbarium, or funeral establishment or a person who is engaged in a funeral service or an interment.

**History:** En. Sec. 30, Ch. 35, L. 1949; amd. Sec. 5, Ch. 62, L. 1977.

#### Amendments

The 1977 amendment inserted subsection designation (1); substituted "guilty of criminal mischief and is punishable as provided in 94-6-102" for "guilty of a high

misdemeanor" in subsection (1); redesignated former subdivision (c) as subsection (2); inserted "A person is guilty of a misdemeanor who without right knowingly" at the beginning of subsection (2); and made minor changes in phraseology and punctuation.

**9-1006. Exceptions.** (1) The provisions of 9-1004 do not apply to the removal or unavoidable breakage or injury, by a mausoleum-columbarium authority, of anything placed in or upon any portion of its mausoleum or columbarium or the grounds within which the same are situated in violation of any of the rules of the mausoleum-columbarium authority.

(2) The provisions of 9-1004 do not apply to the removal of anything placed in a mausoleum or columbarium or the grounds within which it is situated, by or with the consent of the mausoleum-columbarium authority, which has become wrecked, unsightly, or dilapidated.

**History:** En. Sec. 32, Ch. 35, L. 1949; amd. Sec. 6, Ch. 62, L. 1977.

#### Amendments

The 1977 amendment inserted the subsection designations; deleted "or regula-

tions" after "rules" near the end of subsection (1); inserted "The provisions of 9-1004 do not apply" at the beginning of subsection (2); and made minor changes in phraseology and punctuation.

**9-1013. Construction in violation of act a public nuisance—penalty.** An owner or operator of a mausoleum or columbarium erected in violation of this act is guilty of maintaining a public nuisance and upon conviction is punishable by a fine of not less than \$500 or more than \$5,000 in the case of a corporation, or as provided in 94-8-107 in the case of an individual. In addition, the owner or operator is liable for all costs, expenses, and disbursements paid or incurred in prosecuting the case. The costs, expenses, and disbursements shall be fixed by the court having jurisdiction of the case.

**History:** En. Sec. 121, Ch. 35, L. 1949; amd. Sec. 7, Ch. 62, L. 1977.

#### Amendments

The 1977 amendment substituted "in the case of a corporation, or as provided in 94-8-107 in the case of an individual"

for "by imprisonment in a county jail for not less than one (1) month nor more than six (6) months, or by both" at the end of the first sentence; and made minor changes in phraseology, punctuation and style.





## TITLE 10—CHILDREN AND CHILD WELFARE

### Chapter

2. Child labor—prohibitions, 10-204, 10-205.
3. Apprenticing of minors, Repealed—Section 1, Chapter 184, Laws of 1975.
7. Child adoption agencies, 10-701, 10-706.
8. Day care facilities for children, 10-801, 10-802.1, 10-803 to 10-807, 10-810 to 10-812.
12. Youth Court Act, 10-1201 to 10-1252.
13. Abused, neglected and dependent children or youth, 10-1300 to 10-1305, 10-1308 to 10-1315, 10-1317, 10-1318, 10-1320 to 10-1322.
14. Interstate compact on placement of children, 10-1401 to 10-1409.

### CHAPTER 2—CHILD LABOR—PROHIBITIONS

#### Section

- 10-204. Age certificates.  
10-205. Enforcement.

**10-204. (3098) Age certificates.** Upon attaining the age of 16 years any child may make application to the commissioner of labor and industry for an age certificate, which must be presented to any employer with whom the child seeks employment. The employer, if such employment be given, must countersign the certificate and return it to the commissioner, who shall keep it on file in his office. Any person, firm, company, association, or corporation who employs or permits to be employed in any occupation prohibited by 10-201 any child without such certificate showing the child to be at least 16 years of age is guilty of a misdemeanor and punishable as hereinafter provided should such child prove to be less than 16 years of age.

**History:** En. Sec. 4, Ch. 99, L. 1907; Sec. 1749, Rev. C. 1907; re-en. Sec. 3098, R. C. M. 1921; amd. Sec. 1, Ch. 100, L. 1977.

#### Amendments

The 1977 amendment made minor changes in phraseology and style.

**10-205. (3099) Enforcement.** To enforce this act the commissioner of labor and industry and each county attorney shall, each upon his own volition or upon the sworn complaint of any reputable citizen that this act is being violated, make prosecutions for such violations.

**History:** En. Sec. 5, Ch. 99, L. 1907; Sec. 1750, Rev. C. 1907; re-en. Sec. 3099, R. C. M. 1921; amd. Sec. 2, Ch. 100, L. 1977.

#### Amendments

The 1977 amendment deleted "the bureau of child and animal protection" after "labor and industry"; and made minor changes in phraseology.

**10-207 to 10-210. (3101 to 3104) Repealed.**

#### Repeal

Sections 10-207 to 10-210 (Sec. 15, 5th Div. Comp. Stat. 1887; Sees. 1 to 3, Ch.

16, L. 1905), relating to penalties for prohibited employment of children, were repealed by Sec. 25, Ch. 100, Laws 1977.

## CHAPTER 3—APPRENTICING OF MINORS

(Repealed—Section 1, Chapter 184, Laws of 1975)

**10-301 to 10-310. (5890 to 5899) Repealed.****Repeal**

Sections 10-301 to 10-310 (Secs. 360 to 369; Sec. 1, Ch. 5, L. 1971), relating to

apprenticing of minors, were repealed by Sec. 1, Ch. 184, Laws 1975.

## CHAPTER 5—DEPENDENT AND NEGLECTED CHILDREN—PROCEEDINGS FOR PROTECTION

**Section**

10-520 to 10-525. [Transferred.]

**10-501 to 10-504. (10465 to 10468) Repealed.****Repeal**

Sections 10-501 to 10-504 (Secs. 1 to 4, Ch. 92, L. 1907; Sec. 1, Ch. 209, L. 1947; Sec. 80, Ch. 199, L. 1965; Sec. 1, Ch. 407,

L. 1973; Sec. 47, Ch. 121, L. 1974), relating to dependent and neglected children, were repealed by Sec. 13, Ch. 328, Laws of 1974.

**10-505. Repealed.****Repeal**

Section 10-505 (Sec. 1, Ch. 145, L. 1943), relating to dependent and neglected chil-

dren, was repealed by Sec. 52, Ch. 121, Laws of 1974; Sec. 13, Ch. 328, Laws of 1974.

**10-506 to 10-519. (10469 to 10479.1) Repealed.****Repeal**

Sections 10-506 to 10-519 (Secs. 5 to 15, Ch. 92, L. 1907; Sec. 1, Ch. 86, L. 1933; Secs. 2, 3, Ch. 145, L. 1943; Sec. 1, Ch. 170, L. 1961; Secs. 78, 79, 81, 82, Ch. 199, L.

1965; Secs. 47, 48, Ch. 121, L. 1974), relating to dependent and neglected children, were repealed by Sec. 13, Ch. 328, Laws of 1974.

**10-520 to 10-525. [Transferred.]****Compiler's Notes**

Section 14, Ch. 328, Laws of 1974 re-

numbered these sections as secs. 10-1316 to 10-1321.

## CHAPTER 6—JUVENILE COURTS AND PROCEEDINGS AGAINST JUVENILE DELINQUENTS

**Section**

10-615. [Transferred.]

10-627, 10-628. [Transferred.]

10-631. [Transferred.]

**10-601 to 10-603. Repealed.****Repeal**

Sections 10-601 to 10-603 (Secs. 1 to 3, Ch. 227, L. 1943; Sec. 1, Ch. 123, L. 1945; Sec. 1, Ch. 276, L. 1947; Sec. 1, Ch. 124, L. 1957; Sec. 1, Ch. 24, L. 1963; Secs. 1, 2,

Ch. 262, L. 1969), relating to construction and purpose, definitions, and jurisdiction of the courts in the juvenile court act, were repealed by Sec. 54, Ch. 329, Laws of 1974.

**10-604. Repealed.****Repeal**

Section 10-604 (Sec. 1, Ch. 41, L. 1945) relating to the trial of juvenile cases by a

special jury was repealed by Sec. 16, Ch. 262, Laws 1969.



**10-604.1. Repealed.****Repeal**

Section 10-604.1 (Sec. 3, Ch. 262, L. 1969), relating to right to a jury trial in

juvenile courts, was repealed by Sec. 54, Ch. 329, Laws of 1974.

**10-605. Repealed.****Repeal**

Section 10-605 (Sec. 4, Ch. 227, L. 1943) relating to the requirements of a petition,

was repealed by Sec. 16, Ch. 262, Laws 1969.

**10-605.1. Repealed.****Repeal**

Section 10-605.1 (Sec. 4, Ch. 262, L. 1969; Sec. 1, Ch. 195, L. 1971), relating to the preliminary inquiry and petition charge-

ing a child is a juvenile delinquent, was repealed by Sec. 54, Ch. 329, Laws of 1974.

**10-606 to 10-608. Repealed.****Repeal**

Sections 10-606 to 10-608 (Secs. 5 to 7, Ch. 227, L. 1943; Sec. 5, Ch. 262, L. 1969),

relating to issuance and service of citations by the court, were repealed by Sec. 54, Ch. 329, Laws of 1974.

**10-608.1. Repealed.****Repeal**

Section 10-608.1 (Sec. 6, Ch. 262, L. 1969), relating to taking a child into cus-

tody, was repealed by Sec. 54, Ch. 329, Laws of 1974.

**10-609. Repealed.****Repeal**

Section 10-609 (Sec. 8, Ch. 227, L. 1943; Sec. 3, Ch. 276, L. 1947), relating to the

release of children taken into custody, was repealed by Sec. 16, Ch. 262, Laws 1969.

**10-610 to 10-614. Repealed.****Repeal**

Sections 10-610 to 10-614 (Secs. 9 to 13, Ch. 227, L. 1943; Sec. 2, Ch. 123, L. 1945; Secs. 4 to 6, Ch. 276, L. 1947; Sec. 1, Ch. 132, L. 1961; Sec. 83, Ch. 199, L. 1965; Secs. 1, 2, Ch. 134, L. 1967; Sec. 1, Ch. 227,

L. 1969; Sec. 7, Ch. 262, L. 1969; Sec. 1, Ch. 368, L. 1971; Sec. 2, Ch. 120, L. 1974), relating to transfer of juvenile delinquents from other courts and the hearing and judgment in juvenile cases, were repealed by Sec. 54, Ch. 329, Laws of 1974.

**10-615. [Transferred.]****Compiler's Notes**

Section 38, Ch. 329, Laws of 1974 re-numbered this section as sec. 10-1238.

**10-616, 10-617. Repealed.****Repeal**

Sections 10-616, 10-617 (Secs. 15, 16, Ch. 227, L. 1943; Sec. 1, Ch. 22, L. 1959), relating to parents' responsibility for sup-

port and the penalty for improper and negligent training of children, were repealed by Sec. 54, Ch. 329, Laws of 1974.

**10-618 to 10-620. Repealed.****Repeal**

Sections 10-618 to 10-620 (Secs. 17 to 19, Ch. 227, L. 1943; Sec. 8, Ch. 276, L. 1947), relating to the suspension of sen-

tence and posting of bond or undertaking in juvenile cases, were repealed by Sec. 16, Ch. 262, Laws 1969.

**10-621 to 10-626. Repealed.****Repeal**

Sections 10-621 to 10-626 (Secs. 20 to 25, Ch. 227, L. 1943; Sec. 1, Ch. 116, L. 1947; Secs. 9, 10, Ch. 276, L. 1947; Sec. 1, Ch. 27, L. 1951; Sec. 1, Ch. 112, L. 1953; Sec. 1, Ch. 36, L. 1955; Sec. 1, Ch. 177, L. 1957; Sec. 1, Ch. 166, L. 1961; Sec. 1, Ch. 115, L. 1963; Sec. 1, Ch. 94, L. 1965; Sec.

1, Ch. 7, L. 1967; Secs. 9 to 12, Ch. 262, L. 1969; Sec. 1, Ch. 318, L. 1971; Sec. 1, Ch. 428, L. 1971; Sec. 1, Ch. 505, L. 1973; Sec. 1, Ch. 241, L. 1974), relating to designation of juvenile judge, probation officers, physical and mental examinations, and places of detention, were repealed by Sec. 54, Ch. 329, Laws of 1974.

**10-627, 10-628. [Transferred.]****Compiler's Notes**

Sections 37, 40, Ch. 329, Laws of 1974

renumbered these sections as secs. 10-1237 and 10-1240.

**10-629, 10-630. Repealed.****Repeal**

Sections 10-629 and 10-630 (Secs. 28, 29, Ch. 227, L. 1943; Sec. 11, Ch. 276, L. 1947; Sec. 14, Ch. 262, L. 1969), relating to the

juvenile court committee and to prosecutions by the county attorney, were repealed by Sec. 54, Ch. 329, Laws of 1974.

**10-631. [Transferred.]****Compiler's Notes**

Section 39, Ch. 329, Laws of 1974 renumbered this section as sec. 10-1239.

**10-632. Repealed.****Repeal**

Section 10-632 (Sec. 33, Ch. 227, L. 1943; Sec. 84, Ch. 199, L. 1965), relating to the

effect of the juvenile court law on the institutional and welfare laws, was repealed by Sec. 16, Ch. 262, Laws 1969.

**10-633. Repealed.****Repeal**

Section 10-633 (Sec. 12, Ch. 276, L. 1947; Sec. 2, Ch. 132, L. 1961), relating to pro-

hibition against publicity in juvenile cases, was repealed by Sec. 54, Ch. 329, Laws of 1974.

**CHAPTER 7—CHILD ADOPTION AGENCIES****Section**

10-701. Definitions.

10-706. Penalties—procuring without a license—report to department.

**10-701. Definitions. As used in this act:**

(1) "Person" includes any individual, partnership, voluntary association, or corporation.

(2) "Agency" includes a person not related by blood or marriage to a minor child to be adopted. This act does not apply to the Montana Children's Center.

(3) "State department" means the department of social and rehabilitation services provided for in Title 82A, chapter 19.

**History:** En. Sec. 1, Ch. 179, L. 1949; amd. Sec. 1, Ch. 121, L. 1974.

**Amendments**

The 1974 amendment substituted "Mon-

tana Children's Center" for "state orphan's home of the state of Montana" in subdivision (2); added subdivision (3); and made minor changes in phraseology, punctuation and style.

**10-703. Licenses issued by department of public welfare, etc.****Compiler's Notes**

Section 49, Ch. 121, Laws 1974, substituted "state department" throughout this section for "state department of public welfare," and "department of public welfare."

**Cross-References**

State department of public welfare abolished and functions transferred, sec. 82A-1902 (1).

**Payment to Private Institutions**

Payment of public funds to persons providing medical, hospitalization, and foster

home care to indigent mothers who have sought or received assistance from private rather than public adoptive agencies is not unconstitutional. *Montana State Welfare Board v. Lutheran Social Services of Montana*, 156 M. 381, 480 P 2d 181.

Department is not empowered under this section to deprive indigent expectant mothers of public assistance for medical, hospital, and foster home expenses merely because they apply to private rather than public adoption agencies for counseling and adoptive services. *Montana State Welfare Board v. Lutheran Social Services of Montana*, 156 M 381, 480 P 2d 181.

**10-704, 10-705.****Compiler's Notes**

Section 49, Ch. 121, Laws 1974, substituted "state department" throughout these

sections for "state department of public welfare," and "department of public welfare."

**10-706. Penalties—procuring without a license—report to department.**

(1) Any person who maintains or conducts an agency for procuring the adoption of minor children, or assists in the maintaining or conducting of such agency, without first obtaining a license, is guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding one thousand dollars (\$1,000).

(2) Upon the first conviction of a person for violation of this section, the court, instead of imposing the prescribed sentence, may enjoin the offender from any further action in violation of this section.

**History:** En. Sec. 6, Ch. 179, L. 1949; amd. Sec. 1, Ch. 495, L. 1975.

section (1) designation; reduced the offense from a felony to a misdemeanor (without changing the penalty); added subsection (2); and made minor changes in phraseology and style.

**Amendments**

The 1975 amendment inserted the sub-

**CHAPTER 8—DAY CARE FACILITIES FOR CHILDREN**

- Section**  
 10-801. Definitions.  
 10-802.1. Municipal day care facilities authorized—tax levy.  
 10-803. Standards for child care.  
 10-804. Fire safety—certification required.  
 10-805. Health protection—certificate required by department of health and environmental sciences.  
 10-806. Licenses issued by the state department—application by Indians—rules—minimum requirements of licensees.  
 10-807. Provisional license.  
 10-810. License—denial—nonrenewal—revocation—hearing.  
 10-811. Violations.  
 10-812. Payments for eligible children.

**10-801. Definitions. In this act:**

- (1) "Child" means a person under twelve (12) years of age;  
 (2) "Day care facility" means a person, association, or place, incorporated or unincorporated, that receives for care during the day or part



of the day three (3) or more children of separate families and continues this type of care for five (5) or more consecutive weeks. It does not include a person who limits care to children who are related to him by blood or marriage or under his legal guardianship, and all group facilities established chiefly for educational purposes;

(3) "Day care center" means a day care facility that receives seven (7) or more children for care for five (5) or more hours of the day for five (5) or more consecutive weeks. It may include facilities known as child care centers, nursery schools, day nurseries, and centers for the mentally retarded;

(4) "State department" or "department" means the department of social and rehabilitation services provided for in Title 82A, chapter 19.

History: En. Sec. 1, Ch. 247, L. 1965;  
amd. Sec. 2, Ch. 121, L. 1974.

Pilot Project of Expanded Day-Care Assistance

#### Amendments

The 1974 amendment deleted a definition of "Family Day Care Home"; added subdivision (4); and made minor changes in phraseology, punctuation and style.

Chapter 581, Laws 1977, provides for establishment by the department of social and rehabilitation services of a pilot project of expanded day-care assistance. The act makes an appropriation of \$190,500 for the biennium and remains in effect until June 30, 1979 or until expenditure of the funds appropriated.

### 10-802. License required—term of license—no fee charged.

#### Compiler's Notes

Section 49, Ch. 121, Laws 1974, sub-

stituted "state department" in this section for "state board of public welfare."

**10-802.1. Municipal day care facilities authorized—tax levy.** The governing body of a city, town or municipality may in its discretion establish a fund to establish, and maintain licensed day care centers and homes within the geographic boundaries of the governing body by a levy of up to one (1) mill on each dollar of taxable property of said governing body. The tax levy shall be in addition to all other tax levies. The governing body shall have the power, by resolution, to make expenditures from the fund as it may from time to time determine, provided that expenditures shall be made solely for the establishment, maintenance and development of day care centers and homes.

History: En. 10-802.1 by Sec. 1, Ch. 392, L. 1973.

funds to establish and maintain licensed day care centers and homes, and providing for a special levy.

#### Title of Act

An act to authorize the creation of

**10-803. Standards for child care.** The state department shall prescribe and publish minimum standards for a license. In developing these standards the department shall seek the advice and assistance of the department of health and environmental sciences, and superintendent of public instruction, representatives of day care facilities, specialists in child care, and representatives of parent groups who use the services of day care facilities. The standards may pertain to:

(1) Character, suitability, and qualifications of an applicant, and other persons directly responsible for the care of children;

(2) The number of individuals or staff required for adequate supervision and care of children in day care centers;

(3) Child care programs and practices essential to the protection of health, safety, development, and well-being of children;

(4) Adequate and appropriate admission policies;

(5) Adequacy of physical facilities and equipment;

(6) General financial ability and competence of an applicant to provide necessary care for children and maintain prescribed standards.

**History:** En. Sec. 3, Ch. 247, L. 1965; amd. Sec. 3, Ch. 121, L. 1974.

#### **Amendments**

The 1974 amendment substituted "state department" for "state board of public

welfare" in the first sentence; substituted "department of health and environmental sciences" for "state board of health" in the second sentence; and made minor changes in phraseology, punctuation and style.

**10-804. Fire safety—certification required.** The department of justice shall adopt and enforce rules for the protection of children in care facilities from fire hazards, and arrange for such inspections and investigations as it considers necessary. Each applicant for a license to operate a day care center shall submit to the department of social and rehabilitation services a certificate of approval indicating that fire safety rules have been met before a license can be issued. In all non-fire-resistant homes two (2) stories or more in height with ten (10) or more children, automatic sprinkler systems acceptable to the department of justice shall be installed, with the department of justice to issue for the information and use of the department of social and rehabilitation services, certificates of compliance with fire rules and standards applicable to the facilities.

**History:** En. Sec. 4, Ch. 247, L. 1965; amd. Sec. 4, Ch. 121, L. 1974.

#### **Amendments**

The 1974 amendment substituted "department of justice" for "state fire mar-

shal" in the first and third sentences; substituted "department of social and rehabilitation services" for "department of public welfare" in the second sentence and "board" in the third sentence; and made minor changes in phraseology.

**10-805. Health protection — certificate required by department of health and environmental sciences.** The department of health and environmental sciences shall adopt rules for the protection of children in day care centers from the health hazards of overcrowding, food preparation, and communicable diseases and arrange for any inspections and investigations it considers necessary. Each applicant for a license to operate a day care center shall submit to the department of social and rehabilitation services a certificate of approval that the department of health and environmental sciences rules have been met before a license can be issued.

**History:** En. Sec. 5, Ch. 247, L. 1965; amd. Sec. 5, Ch. 121, L. 1974.

#### **Amendments**

The 1974 amendment substituted "department of health and environmental

sciences" for "state board of health" in the first and second sentences; substituted "department of social and rehabilitation services" for "board of public welfare" in the second sentence; and made minor changes in phraseology.

**10-806. Licenses issued by the state department—application by Indians—rules—minimum requirements of licensees.** (1) The state department



shall issue licenses to persons to receive into a day care facility, children for care during the day or part of a day. Application for a license shall be made to the state department through the county department of public welfare in the county in which the applicant lives, on forms prescribed by the state department. Upon receipt of the application, the county welfare department, shall, within a reasonable time, investigate to determine whether a license should be granted.

(2) Applications by Indians residing on Indian reservations shall be made through the tribal governing body on forms prescribed by the state department. Applications made through a tribal governing body shall be accompanied by a request by the tribal governing body that the county welfare department in the county in which the applicant resides investigate to determine whether a license should be granted. This investigation shall be made within a reasonable time.

(3) The state department shall prescribe the conditions upon which licenses are issued, and shall adopt rules for the conduct of the facilities which are consistent with the welfare of the children received. The state department must issue licenses to agencies meeting the following minimum requirements;

(a) The applicant, his employees, and all those persons who will come in direct contact with the children are of good moral character

(b) The staff of the facility is sufficient in number to provide adequate supervision and care of the children admitted

(c) Essential programs and practices carried on by the facility staff are developed and carried out with due regard for the protection of the health, safety, development, and well-being of the children

(d) Applicant and staff are qualified by practical experience or education or training, to give good care and treatment to the children

(e) Physical facilities are of a kind that can meet the minimum state standards to provide for the protection of the children from fire and health hazards

(f) Intake records are kept on each child admitted for care

(g) The applicant and staff limits admissions to the maximum number indicated on the current license

(h) The applicant will arrange for the necessary precautions to guard against communicable diseases

(i) Public liability insurance and fire insurance is currently in force for the protection of the operator, his staff, and the facility.

History: En. Sec. 6, Ch. 247, L. 1965; amd. Sec. 6, Ch. 121, L. 1974; amd. Sec. 1, Ch. 293, L. 1977.

#### Amendments

The 1974 amendment substituted "state department" for "state board of public welfare" throughout the section; deleted "This includes agencies now caring for such children who may desire to operate as a day care facility in the future" after

the first sentence in subsection (1); deleted "state board of" before "county welfare department" in the third sentence of subsection (1); added subdivision (2)(i) which formerly was a second sentence in subdivision (2)(f); and made minor changes in phraseology, punctuation and style.

The 1977 amendment inserted subsection (2); and redesignated the former subsection (2) as subsection (3).



**10-807. Provisional license.** The department of social and rehabilitation services may, in its discretion, issue a provisional license for a period of not more than six (6) months if it finds that a substandard day care facility is attempting to meet the minimum standards. The requirement that a day care center shall be certified by the department of justice and the department of health and environmental sciences may not be waived.

**History:** En. Sec. 7, Ch. 247, L. 1965; amd. Sec. 7, Ch. 121, L. 1974.

ices" for "state board of public welfare"; substituted "department of justice" for "state fire marshal"; substituted "department of health and environmental sciences" for "state board of health"; and made minor changes in phraseology.

#### Amendments

The 1974 amendment substituted "department of social and rehabilitation serv-

### 10-808, 10-809.

#### Compiler's Notes

Section 49, Ch. 121, Laws 1974, substituted "state department" throughout these

sections for "board of public welfare" and "board."

**10-810. License — denial — nonrenewal — revocation — hearing.** The department, after notice and opportunity for hearing to the applicant or licensee, may deny, suspend, or revoke a license in any case in which it finds that there has been a substantial failure to comply with the requirements established under this law.

**History:** En. Sec. 10, Ch. 247, L. 1965; amd. Sec. 8, Ch. 121, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "board"; deleted the final

eight sentences of the first paragraph and a second paragraph relating to notice of action on a license, review, and the right of an applicant or licensee to bring civil proceedings; and made minor changes in phraseology and punctuation.

**10-811. Violations.** When the department is advised or has reason to believe that a person, group of persons, or corporation is operating a child care facility without a license, it shall make an investigation to ascertain the facts. If it finds that the child care facility is being, or has been, operated without a license, it may report the results of its investigation to the attorney general or the county attorney of the county where the child care facility is being operated for prosecution and request that an injunction be issued against the facility until a license is issued. In addition, the state department may institute any action necessary to enforce compliance with this act or any order, rule, or regulation of the state department under this act, or to obtain a judicial interpretation of any of the foregoing. The department may institute action by its own attorney or counsel, or may call upon any county attorney to represent it in the district court of the county in which the action is taken, or the attorney general to represent it on appeal to the supreme court of Montana, or it may associate its own counsel with either in any court.

**History:** En. Sec. 11, Ch. 247, L. 1965; amd. Sec. 9, Ch. 121, L. 1974.

#### Amendments

The 1974 amendment substituted "de-

partment" for "board of public welfare" and "board" throughout the section; deleted provisions pertaining to legal actions by the board; and made minor changes in phraseology and punctuation.

**10-812. Payments for eligible children.** The department of social and rehabilitation services shall pay to a licensed day care facility, for each

child eligible to receive public financial support, not less than four dollars (\$4) for each day the child attends the facility. For those day care facilities which meet federal requirements the department shall pay an additional amount, not less than one dollar (\$1) per day, for each eligible child.

**History:** En. 10-812 by Sec. 1, Ch. 167, L. 1975.

cial and rehabilitation services to pay a minimum of four dollars (\$4) per day for each eligible child enrolled in a licensed day care facility.

**Title of Act**

An act to require the department of so-

## CHAPTER 9—REPORTS OF CHILD NEGLECT OR ABUSE

**Section**

10-901 to 10-905. [Transferred.]

### 10-901 to 10-905. [Transferred.]

**Compiler's Notes**

Section 14, Ch. 328, Laws of 1974 re-

numbered these sections as secs. 10-1303 to 10-1307.

## CHAPTER 10—INTERSTATE COMPACT ON JUVENILES

### 10-1004. Financial arrangements.

**Compiler's Notes**

Section 98, Ch. 326, Laws 1974, substi-

tuted "department of administration" in this section for "state controller."

## CHAPTER 11—DISTRICT YOUTH GUIDANCE HOMES

**Section**

10-1101 to 10-1111. [Transferred.]

### 10-1101 to 10-1111. [Transferred.]

**Compiler's Notes**

Sections 42 to 52, Ch. 329, Laws of 1974

renumbered these sections as secs. 10-1242 to 10-1252.

## CHAPTER 12—YOUTH COURT ACT

**Section**

- 10-1201. Short title.
- 10-1202. Declaration of purpose.
- 10-1203. Definitions.
- 10-1204. Constitutionality.
- 10-1205. Number and gender.
- 10-1206. Jurisdiction of the court.
- 10-1207. Venue and transfer.
- 10-1208. Retention of jurisdiction.
- 10-1209. Intake procedure.
- 10-1210. Consent adjustment without petition.
- 10-1211. Taking into custody.
- 10-1212. Detention and shelter care of youth.
- 10-1213. Release or delivery from custody.
- 10-1214. Place of shelter care or detention.
- 10-1215. Petition—form and content.
- 10-1216. Summons.
- 10-1217. Service of summons.
- 10-1218. Basic legal rights.
- 10-1219. Time limitations on petition hearing.
- 10-1220. Adjudicatory hearing.
- 10-1221. Dispositional hearing.

- 10-1222. Disposition of delinquent youth and youth in need of supervision.
- 10-1223. Disqualification of judges.
- 10-1224. Consent decree with petition.
- 10-1225. Appeals.
- 10-1226. Court costs and expenses.
- 10-1227. Use of private agencies by public agency.
- 10-1228. Probation revocation—disposition.
- 10-1229. Transfer to criminal court.
- 10-1230. Law enforcement records.
- 10-1231. Youth court records.
- 10-1232. Disposition of records.
- 10-1233. Youth court judge.
- 10-1234. Probation officers—powers—duties—qualifications.
- 10-1235. Order of adjudication—noncriminal.
- 10-1236. Shelter care and foster homes.
- 10-1237. Shelter care and detention facilities.
- 10-1238. Support of youth committed to a custodial agency.
- 10-1239. [Transferred from Chapter 6.]
- 10-1240. Youth court committee.
- 10-1241. Publicity.
- 10-1242. Establishment of district youth guidance home program.
- 10-1243. Definitions.
- 10-1244. Nonprofit corporations to establish homes authorized—power to receive facilities and funds.
- 10-1245. Governmental aid to nonprofit organizations.
- 10-1246. Authority of youth court judge to commit delinquent youths and youths in need of supervision.
- 10-1247. Petition by person under twenty-one (21) to be placed in district youth guidance home.
- 10-1248. Continuing jurisdiction of youth court over youths.
- 10-1249. Per diem charge to financially able parents.
- 10-1250. Placement of youths by department of institutions.
- 10-1251. Rules.
- 10-1252. Federal assistance.

**10-1201. Short title.** This act may be cited as the “Montana Youth Court Act.”

**History:** En. 10-1201 by Sec. 1, Ch. 329, 627, 10-628, 10-631, 10-1101, 10-1102, 10-1103, 10-1104, 10-1105, 10-1106, 10-1107, 10-1108, 10-1109, 10-1110, 10-1111, and 94-2-109, R. C. M. 1947; and repealing sections 10-601, 10-602, 10-603, 10-604.1, 10-605.1, 10-606, 10-607, 10-608, 10-608.1, 10-610, 10-611, 10-611.1, 10-612, 10-613, 10-614, 10-616, 10-617, 10-621, 10-622, 10-623, 10-624, 10-625, 10-626, 10-629, 10-630, and 10-633.

**Title of Act**

An act for the general revision of the laws relating to juveniles and juvenile courts; providing for other matters relating to treatment and procedures concerning youth; amending sections 10-615, 10-

**10-1202. Declaration of purpose.** The Montana Youth Court Act shall be interpreted and construed to effectuate the following express legislative purposes:

(1) to preserve the unity and welfare of the family whenever possible, and to provide for the care, protection and wholesome mental and physical development of a youth coming within the provisions of the Montana Youth Court Act;

(2) to remove from youth committing violations of the law the element of retribution and to substitute therefor a program of supervision, care and rehabilitation;

(3) to achieve the purposes of (1) and (2) of this section in a family environment whenever possible, separating the youth from his parents only when necessary for the welfare of the youth or for the safety and protection of the community;



(4) to provide judicial procedures in which the parties are assured a fair hearing and recognition and enforcement of their constitutional and statutory rights.

History: En. 10-1202 by Sec. 2, Ch. 329,  
L. 1974.

**10-1203. Definitions.** For the purposes of the Montana Youth Court Act, unless otherwise stated:

(1) "Adult" means an individual who is eighteen years of age or older.

(2) "Agency" means the department of institutions, the department of social and rehabilitation services, and any division or department of either.

(3) "Commit" means to transfer to legal custody.

(4) "Court," when used without further qualification, means the youth court of the district court.

(5) "Foster home" means a private residence approved by the court for placement of a youth.

(6) "Guardianship" means the status created and defined by law between a youth and an adult with the reciprocal rights, duties and responsibilities.

(7) "Judge," when used without further qualification, means the judge of the youth court.

(8) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to: have physical custody of the youth; determine with whom the youth shall live and for what period; protect, train, and discipline the youth; and provide the youth with food, shelter, education, and ordinary medical care. An individual granted legal custody of a youth shall personally exercise his rights and duties as guardian unless otherwise authorized by the court entering the order.

(9) "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless his paternity is established by an adjudication or by other clear and convincing proof.

(10) "Youth" means an individual who is less than eighteen years of age without regard to sex or emancipation.

(11) "Youth court" means the court established pursuant to this act to hear all proceedings in which a youth is alleged to be a delinquent youth, a youth in need of supervision or a youth in need of care, and includes the youth court, the judge and probation officers.

(12) "Delinquent youth" means a youth:

(a) who has committed an offense which, if committed by an adult, would constitute a criminal offense;

(b) who, having been placed on probation as a delinquent youth or a youth in need of supervision, violates any condition of his probation.

(13) "Youth in need of supervision" means a youth who commits an offense prohibited by law which, if committed by an adult, would not constitute a criminal offense, including but not limited to a youth who:

(a) violates any Montana municipal or state law regarding use of alcoholic beverages by minors; or

(b) habitually disobeys the reasonable and lawful demands of his parents or guardian, or is ungovernable and beyond their control; or

(c) being subject to compulsory school attendance is habitually truant from school; or

(d) has committed any of the acts of a delinquent youth but whom the youth court in its discretion chooses to regard as a youth in need of supervision.

(14) "Youth in need of care" means a youth as defined in section 10-1301.

(15) "Custodian" means a person other than a parent or guardian, to whom legal custody of the youth has been given, but does not include a person who has only physical custody.

(16) "Necessary parties" include the youth, his parents, guardian, custodian or spouse.

(17) "State youth correctional facility" means a residential facility for the rehabilitation of delinquent youth such as Pine Hills School in Miles City, Mountain View School in Helena, and Swan River youth forest camp.

(18) "Shelter care" means the temporary care of youth in physically unrestricted facilities.

(19) "Detention" means the temporary care of youth in physically restricting facilities.

**History:** En. 10-1203 by Sec. 3, Ch. 329, L. 1974; amd. Sec. 1, Ch. 571, L. 1977.

ning of subdivision (17) for "Detention facility"; added "and Swan River youth forest camp" at the end of subdivision (17); added subdivisions (18) and (19); and made minor changes in punctuation.

#### **Amendments**

The 1977 amendment substituted "State youth correctional facility" at the begin-

**10-1204. Constitutionality.** The provisions of this act are separate and severable. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**History:** En. 10-1204 by Sec. 4, Ch. 329, L. 1974.

**10-1205. Number and gender.** The singular includes the plural, the plural includes the singular, and the masculine includes the feminine unless the context indicates otherwise.

**History:** En. 10-1205 by Sec. 5, Ch. 329, L. 1974.

**10-1206. Jurisdiction of the court.** (1) The court has exclusive original jurisdiction of all proceedings under the Montana Youth Court Act in which a youth is alleged to be a delinquent youth; a youth in need of

supervision; or a youth in need of care, or concerning any person under 21 years of age charged with having violated any law of the state or ordinance of any city or town prior to having become 18 years of age.

(2) Justice, municipal, and city courts have concurrent jurisdiction with the youth court over all alcoholic beverage, traffic, and fish and game violations alleged to have been committed by a youth.

**History:** En. 10-1206 by Sec. 6, Ch. 329, L. 1974; amd. Sec. 3, Ch. 100, L. 1977; amd. Sec. 1, Ch. 446, L. 1977.

#### Compiler's Notes

This section was amended twice in 1977, once by Ch. 100 and once by Ch. 446. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

#### Amendments

Chapter 100, Laws of 1977, substituted "city courts" for "police courts" near the beginning of subsection (2); and made minor changes in phraseology, punctuation and style.

Chapter 446, Laws of 1977, substituted "city courts" for "police courts" near the beginning of subsection (2); inserted "alcoholic beverage" near the middle of subsection (2); deleted the latter part of subsection (2) which read: "except that the following alleged violations are under the exclusive jurisdiction of the court: (a) driving while intoxicated as defined in section 32-2142, R. C. M. 1947; (b) failing to stop at an accident as defined in section 32-1202, R. C. M. 1947; and (c) driving without a valid license or permit as defined in sections 31-125 and 31-127, R. C. M. 1947, after having been previously convicted of the same offense"; and made minor changes in phraseology, punctuation and style.

### DECISIONS UNDER FORMER LAW

#### Involuntary Manslaughter

Conviction of involuntary manslaughter, arising from driving an automobile while intoxicated, was proper notwithstanding defendant's contention that since he was

a juvenile and "delinquent child" within the meaning of the Juvenile Code he could be punished only civilly for his acts and not criminally. *State v. Medicine Bull*, 152 M 34, 445 P 2d 916.

**10-1207. Venue and transfer.** (1) The county where a youth is a resident has initial jurisdiction over any youth alleged to be a delinquent youth; a youth in need of supervision; or a youth in need of care, and the youth court of that county shall assume the initial handling of the case. Transfers of venue may be made to any of the following counties in the state:

- (a) the county in which the youth is apprehended or found;
- (b) the county in which the youth is alleged to have violated the law;
- (c) the county of residence of the youth's parents or guardian.

(2) A change of venue may be ordered at any time by the concurrence of the youth court judges of both counties in order to assure a fair, impartial and speedy hearing and final disposition of the case.

(3) In the case of a youth sixteen (16) years of age or older who is accused of one of the serious offenses listed in section 10-1229, the court in the county where the offense occurred shall serve as a transfer hearing court, and if the youth is to be tried in district court the charge shall be filed and trial held in the district court of the county where the offense occurred.

**History:** En. 10-1207 by Sec. 7, Ch. 329, L. 1974.



**10-1208. Retention of jurisdiction.** Once a court obtains jurisdiction over a youth the court retains jurisdiction unless terminated by the court or by mandatory termination in the following cases:

(1) at the time the proceedings are transferred to adult criminal court;

(2) at the time of commitment of the youth to the custody of the state department of institutions;

(3) in any event, at the time the youth reaches the age of twenty-one (21) years.

**History:** En. 10-1208 by Sec. 8, Ch. 329, L. 1974.

**10-1209. Intake procedure.** (1) Whenever the court receives information from any agency or person based upon reasonable grounds that a youth is, or appears to be a delinquent youth or a youth in need of supervision; or being subject to a court order or consent order, has violated the terms thereof; the probation officer shall make a preliminary inquiry into the matter.

(2) The probation officer may require the presence of any person relevant to the inquiry, and may request subpoenas from the judge to accomplish this purpose. The probation officer may require investigation of the matter by any law enforcement agency or any other appropriate state or local agency.

(3) If the probation officer determines that the facts indicate a youth in need of care, the matter shall be immediately referred to the state department of social and rehabilitation services.

(4) The probation officer in the conduct of the preliminary inquiry shall:

(a) advise the youth of the youth's rights under this act and the constitutions of the State of Montana and the United States;

(b) determine whether the matter is within the jurisdiction of the court;

(c) determine, if the youth is in detention or shelter care, whether such detention or shelter care should be continued based upon criteria set forth in 10-1212.

Once relevant information is secured, the probation officer shall:

(d) determine whether the interest of the public or the youth requires that further action be taken;

(e) terminate the inquiry upon the determination that no further action be taken;

(f) release the youth immediately upon the determination that the filing of a petition is not authorized.

(5) The probation officer upon determining that further action is required may:

(a) provide counseling; refer the youth and his parents to another agency providing appropriate services; or take any other action or make any informal adjustment that does not involve probation or detention;

(b) provide for treatment or adjustment involving probation or other disposition authorized under section 10-1210; provided, however, that such treatment or adjustment is voluntarily accepted by the youth's parents, or guardian, and the youth; and provided further that said matter is referred immediately to the county attorney for review and that the probation officer proceed no further unless authorized by the county attorney;

(c) refer the matter to the county attorney for filing a petition charging the youth to be a delinquent youth or a youth in need of supervision.

(6) A petition charging a youth held in detention must be filed within 5 working days from the date the youth was first detained or the petition shall be dismissed and the youth released unless good cause is shown to further detain such youth.

(7) If no petition is filed under this section, the complainant and victim, if any, shall be informed by the probation officer of the action and the reasons therefor and shall be advised of the right to submit the matter to the county attorney for review. The county attorney upon receiving a request for review, shall consider the facts, consult with the probation officer, and make the final decision as to whether a petition shall or shall not be filed.

**History:** En. 10-1209 by Sec. 9, Ch. 329, L. 1974; amd. Sec. 2, Ch. 571, L. 1977.

#### Amendments

The 1977 amendment substituted "shelter care, whether such detention or shelter care should be continued based upon criteria set forth in 10-1212" at the end of

subdivision (4)(c) for "custody, whether such detention or custody should be continued"; deleted "custody or" before "detention" near the beginning of subsection (6); substituted "detained" for "confined" in the middle of subsection (6); and made a minor change in style.

**10-1210. Consent adjustment without petition.** (1) Before a petition is filed, the probation officer may enter into an informal adjustment and give counsel and advice to the youth and other interested parties if it appears:

(a) the admitted facts bring the case within the jurisdiction of the court;

(b) counsel and advice without filing a petition would be in the best interests of the child and the public.

(2) Any probation or other disposition imposed under this section against any youth must conform to the following procedures:

(a) Every consent adjustment shall be reduced to writing and signed by the youth and his parents or the person having legal custody of the youth.

(b) Approval by the youth court judge is required if the complaint alleges commission of a felony or if the youth has been or will be in any way detained.

(3) An incriminating statement relating to any act or omission constituting delinquency or need of supervision made by the participant to the person giving counsel or advice in the discussions or conferences incident thereto may not be used against the declarant in any proceeding under this act, nor may the incriminating statement be admissible in any criminal proceeding against the declarant.

(4) The following dispositions may be imposed by informal adjustment:

- (a) probation;
- (b) placement of the youth in a licensed foster home or other home approved by the court;
- (c) placement of the youth in a private agency responsible for the care and rehabilitation of such a youth, including but not limited to a district youth guidance home;
- (d) transfer of legal custody of the youth to the department of institutions, provided that such commitment does not authorize the department of institutions to place the youth in a state youth correctional facility, and such commitment may not exceed a period of 6 months without a subsequent order of the court, after notice and hearing.

**History:** En. 10-1210 by Sec. 10, Ch. 329, L. 1974; amd. Sec. 4, Ch. 100, L. 1977; amd. Sec. 3, Ch. 571, L. 1977.

#### Compiler's Notes

This section was amended twice in 1977, once by Ch. 100 and once by Ch. 571. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

#### Amendments

Chapter 100, Laws of 1977, substituted "may" for "shall" in two places in sub-

section (3); substituted "does not authorize" near the middle of subdivision (4)(d) for "shall not authorize"; deleted "as defined by this act" after "detention facility" near the middle of subdivision (4)(d); substituted "may not exceed" near the middle of subdivision (4)(d) for "shall not exceed"; and made minor changes in phraseology, punctuation and style.

Chapter 571, Laws of 1977, substituted "state youth correctional facility" near the middle of subdivision (4)(d) for "detention facility as defined by this act"; and made a minor change in style.

**10-1211. Taking into custody.** (1) A youth may be taken into custody under the following circumstances:

- (a) by a law enforcement officer pursuant to a lawful order or process of any court;
- (b) by a law enforcement officer pursuant to a lawful arrest for violation of the law;
- (c) by a law enforcement officer, agent of the department of social and rehabilitation services, county attorney, or a person or physician treating a youth when there is reason to believe the youth is a youth in need of care and that the residence of the youth or the custody by the person legally responsible for the youth presents an imminent danger to the life or health of the youth.

(2) The taking of a youth into custody is not an arrest except for the purpose of determining the validity of the taking under the constitution of Montana or the United States.

**History:** En. 10-1211 by Sec. 11, Ch. 329, L. 1974.

**10-1212. Detention and shelter care of youth.** (1) A youth taken into custody may not be detained prior to the hearing on the petition except when:

- (a) his detention is required to protect the person or the property of others or of the youth;



(b) he has pending court or administrative action or is awaiting a transfer to another jurisdiction and may abscond or be removed from the jurisdiction of the court;

(c) there are not adequate assurances that the youth will appear for court when required; or

(d) an order for his detention has been made by the court.

(2) A youth taken into custody may not be sheltered prior to the hearing on the petition except when:

(a) the youth and his family needs shelter care to address their problematic situation when it is not possible for the youth to remain at home;

(b) the youth needs to be protected from physical or emotional harm;

(c) the youth needs to be deterred or prevented from immediate repetition of his troubling behavior;

(d) shelter care is necessary to assess the youth and his environment;

(e) shelter care is necessary to provide adequate time for case planning and disposition; or

(f) shelter care is necessary to intervene in a crisis situation and provide intensive services or attention that might alleviate the problem and reunite the family.

**History:** En. 10-1212 by Sec. 12, Ch. 329, L. 1974; amd. Sec. 4, Ch. 571, L. 1977.

#### Amendments

The 1977 amendment rewrote the section which read: "A youth taken into custody shall not be detained prior to the hearing on the petition except when: his detention or care is required to protect

the person or property of others or of the youth; he may abscond or be removed from the jurisdiction of the court; he has no parent, guardian, or other person able to provide supervision and care for him and return him to the court when required; or an order for his detention has been made by the court pursuant to this act."

**10-1213. Release or delivery from custody.** (1) Whenever a peace officer believes, on reasonable grounds, that a youth can be released to a person who has custody of the youth, then the peace officer may release the youth to that person upon receiving a written promise from the person to bring the youth before the probation officer at a time and place specified in the written promise; or a peace officer may release the youth under any other reasonable circumstances.

(2) Whenever the peace officer believes, on reasonable grounds, that the youth must be detained, the peace officer must notify the probation officer immediately and shall, as soon as practicable, provide the probation officer with a written report of his reasons for holding that youth in custody. If it is necessary to hold the youth pending appearance before the youth court, then the youth must be held in some place that has been approved by the youth court and is completely separated from adult offenders. If the peace officer believes that the youth must be sheltered, the peace officer shall notify the probation officer immediately and shall provide a written report of his reasons for placing the youth in shelter care. If the youth is then held, the youth must be sheltered in a place approved by the youth court.

**History:** En. 10-1213 by Sec. 13, Ch. 329, L. 1974; amd. Sec. 1, Ch. 348, L. 1975; amd. Sec. 5, Ch. 571, L. 1977.

#### **Amendments**

The 1975 amendment reworded a former

subsection (3) and added it to the first sentence of subsection (2), beginning with "and shall, as soon as practicable."

The 1977 amendment added the last two sentences to subsection (2); and made minor changes in phraseology.

**10-1214. Place of shelter care or detention.** (1) A youth alleged to be a delinquent youth or youth in need of supervision may be sheltered only in:

(a) a licensed foster home or a home approved by the court for the provision of shelter care of youth;

(b) a facility operated by a licensed child welfare agency;

(c) a licensed attention home or shelter facility which is operated by a nonprofit corporation or the youth court for the provision of shelter care of youth;

(d) any other suitable place or facility, designated or operated by the court for the supervision of youth in shelter care.

(2) The youth may be detained in a jail or other facility for the detention of adults only if: the facilities in subsection (1) are not available or do not provide adequate security; the detention is in an area physically and visually separate and removed from those of adults; it appears to the satisfaction of the court that public safety and protection reasonably require detention; and the court so orders.

(3) The official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall inform the court immediately if a person who is or appears to be under the age of eighteen (18) years is received at the facility. Such official shall bring the person before the court upon request or deliver him to a detention facility designated by the court.

(4) A youth alleged to be in need of care shall be placed only in the facilities stated in subsection (1) of this section and shall not be detained in a jail or other facility intended or used for the detention of adults charged with criminal offenses.

**History:** En. 10-1214 by Sec. 14, Ch. 329, L. 1974; amd. Sec. 6, Ch. 571, L. 1977.

#### **Amendments**

The 1977 amendment substituted "sheltered" for "detained" in the introductory phase of subsection (1); added "for the provision of shelter care of youth" to subdivision (1)(a); rewrote subdivision (1)(c) which read "a district youth guidance home or other youth facility or center which is under the direction or supervision of the court, other public authority or of a private agency approved by the court"; deleted a former subdivision (1)(d) which read "a detention facility"; redesignated former subdivision (e) as subdivision (d) and subsection (2); added "for the supervision of youth in shelter care" at the end of subdivision (1)(d);

substituted "the facilities in subsection (1) are not available or do not provide adequate security" in the middle of subsection (2) for "the facilities in subsection (c) or (d) is not available"; inserted "physically and visually" in subsection (2); deleted "the facilities specified in subsection (a) or (b) are not sufficient" before "and the court so orders" at the end of subsection (2); redesignated former subsections (2) and (3) as subsections (3) and (4); deleted "subsections (a) and (b) of" after "facilities stated in" near the beginning of subsection (4); deleted "or of youths alleged to be delinquents or in need of supervision by virtue of violations of the law" at the end of subsection (4); and made minor changes in phraseology and style.

**10-1215. Petition—form and content.** A petition initiating proceedings under this act shall be signed by the county attorney and shall be entitled, "In the Matter of \_\_\_\_\_, a youth," and shall set forth with specificity:

(1) the facts necessary to invoke the jurisdiction of the court together with a statement alleging the youth to be a delinquent or in need of supervision;

(2) the charge of an offense which shall:

(a) state the name of the offense;

(b) cite in customary form the statute, rule, regulation or other provisions of law which the youth is alleged to have violated;

(c) state the facts constituting the offense in ordinary and concise language and in such manner as to enable a person of common understanding to know what is intended; and

(d) state the time and place of the offense as definitely as can be done;

(3) the name, birth date and residence address of the youth;

(4) the names and residence addresses of parents, guardian, and spouse, of the youth; and if none of the parents, guardian, or spouse, resides or can be found within the state, or if there is none, the adult relative residing nearest to the court;

(5) whether the youth is in detention or shelter care, and if so, the place of detention or shelter care and the time he was detained or sheltered;

(6) if any of the matters required to be set forth by this section are not known, a statement of those matters and the fact that they are not known; and

(7) a list of witnesses to be used in proving the commission of the offense or offenses charged in the petition, together with their residence addresses. The names and addresses of any witnesses discovered after the filing of the petition shall be furnished to the youth upon request.

**History:** En. 10-1215 by Sec. 15, Ch. 329, L. 1974; amd. Sec. 7, Ch. 571, L. 1977.

**Amendments**

The 1977 amendment substituted "detention or shelter care, and if so, the

place of detention or shelter care and the time he was detained or sheltered" at the end of subdivision (5) for "custody, and if so, the place of detention or care and the time he was taken into custody."

**10-1216. Summons.** (1) After a petition has been filed, summons shall be served directly to the youth; to his parent or parents having actual custody of the youth, or to his guardian or custodian, as the case may be; and to such other persons as the court may direct.

(2) The summons shall require the parties to whom directed to appear personally before the court at the time fixed by the summons to answer the allegations of the petition. The summons shall advise the parties of their right to counsel under the Montana Youth Court Act and shall have attached to it a copy of the petition.



(3) The court may endorse upon the summons an order directing the person or persons having the physical custody or control of the youth to bring the youth to the hearing.

(4) If it appears from any sworn statement presented to the court that the youth needs to be placed in detention or shelter care, the judge may endorse on the summons an order directing the officer serving the summons to at once take the youth into custody and to take him to the place of detention or shelter care designated by the court, subject to the rights of the youth and parent or person having custody of the youth as set forth in the provisions of the Montana Youth Court Act relating to detention and shelter care criteria and post-detention proceedings.

(5) If any youth is in shelter care or detained under any provision of this act pending an adjudication, the court, upon petition of the youth, his parents or guardian or his counsel shall, as soon as practicable, conduct a hearing in order to determine whether the circumstances of the case require such detention or shelter care and the form the detention or shelter care should take. All mentioned parties shall be notified of such petition process at the time of initial detention or shelter care.

**History:** En. 10-1216 by Sec. 16, Ch. 329, L. 1974; amd. Sec. 8, Ch. 571, L. 1977.

#### Amendments

The 1977 amendment inserted "shelter" in two places in subsection (4) after "detention or"; inserted "and shelter care" near the end of subsection (4); substi-

tuted "shelter care" for "custody" near the beginning of subsection (5); substituted "detention or shelter care and the form the detention or shelter care" near the end of the first sentence of subsection (5) for "custody and the form of custody"; and added the second sentence of subsection (5).

**10-1217. Service of summons.** (1) Any youth who is the subject of a proceeding under this act must be personally served with summons at least 5 days before the time stated for appearance.

(2) Service of summons on all other persons designated in 10-1216(1) shall be made in accordance with Rule 40 of the Montana rules of civil procedure, except that in all cases service shall be completed at least 5 days before the time stated for appearance.

(3) If a party referred to in subsection (2) herein is not personally served before a hearing and has not secluded himself with an attempt to delay or disrupt any proceeding, such party may appear within a reasonable time subsequent to the hearing and, on motion to the court, request a rehearing. The motion may be granted at the discretion of the judge if a rehearing would be in the best interest of the youth.

(4) The court may authorize payment from county funds of costs of service and necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing.

(5) An actual abandonment of a youth by his parent or parents shall constitute a waiver of summons and notice requirements by the parent or parents. A return endorsed upon the summons showing inability to serve summons constitutes prima facie evidence of actual abandonment.

(6) The youth court may, in the interests of justice, shorten the notice requirements contained herein, and such notice of shortened time shall be endorsed on the summons.

(7) A party, other than the youth, may waive service of summons on himself by written stipulation or by voluntary appearance at the hearing. If the youth is present at the hearing, his counsel may waive service of summons in his behalf.

**History:** En. 10-1217 by Sec. 17, Ch. 329, L. 1974; amd. Sec. 5, Ch. 100, L. 1977.

#### Amendments

The 1977 amendment deleted "under this act" after "disrupt any proceeding" near the middle of subsection (3); deleted

"in this act" after "requirements" in the first sentence of subsection (5); deleted "in compliance with section 10-1218(2) of this act" after "serve summons" in the last sentence of subsection (5); and made minor changes in style.

**10-1218. Basic legal rights.** (1) When a youth alleged to be a delinquent youth or a youth in need of supervision is taken into custody, the following requirements must be met:

(a) The youth shall be immediately and effectively advised of his constitutional rights and his rights under this act.

(b) The youth may waive such rights under the following situations:

(i) when the youth is under the age of 12 years, the parents of the youth may make an effective waiver;

(ii) when the youth is over the age of 12 years and the youth and his parents agree, they may make an effective waiver; and

(iii) when the youth is over the age of 12 years and the youth and his parents do not agree, the youth may make an effective waiver only with advice of counsel.

(c) In a proceeding alleging a youth to be a delinquent youth:

(i) an extrajudicial statement that would be constitutionally inadmissible in a criminal matter may not be received in evidence;

(ii) evidence illegally seized or obtained may not be received in evidence to establish the allegations of a petition against a youth; and

(iii) an extrajudicial admission or confession made by the youth out of court is insufficient to support a finding that the youth committed the acts alleged in the petition unless it is corroborated by other evidence.

(2) Title 95 shall apply to all law enforcement investigations relating to a complaint alleging a delinquent youth or youth in need of supervision, except that:

(a) no youth may be fingerprinted or photographed for criminal identification purposes except by order of the youth court judge;

(b) no fingerprint records or photographs may be filed with the federal bureau of investigation, state of Montana identification bureau, or any other than the originating agency, except for sending the fingerprints or photographs to any law enforcement agency for comparison purposes in the original investigation;

(c) at such time as the proceedings in the matter, including appeals, are complete, the fingerprint records and photographs shall be destroyed. However, such fingerprint records and photographs may be retained by the originating agency for a specific period when ordered by the court for good cause shown.

(3) In all proceedings on a petition alleging a delinquent youth or youth in need of supervision the youth and the parents or guardian of the youth shall be advised by the court or, in the absence of the court, by its representative that the youth may be represented by counsel at all stages of the proceedings. If counsel is not retained or if it appears that counsel will not be retained, counsel shall be appointed for the youth, unless the right to appointed counsel is waived by the youth and the parents or guardian. Neither the youth nor his parent or guardian may waive counsel if commitment to a state correctional facility or to the department of institutions for a period of more than 6 months may result from adjudication.

(4) The court at any stage of a proceeding on a petition under this act may appoint a guardian ad litem for a youth if the youth has no parent or guardian appearing in his behalf or if their interests conflict with those of the youth. A party to the proceeding or an employee or representative of a party may not be appointed as guardian ad litem.

(5) In a proceeding on a petition, a party is entitled to:

(a) the opportunity to introduce evidence and otherwise be heard on the party's own behalf;

(b) confront and cross-examine witnesses testifying against the party; and

(c) admit or deny the allegations against the party in the petition.

(6) Persons afforded rights under this act shall be advised of those rights and any other rights existing under law at the time of their first appearance in a proceeding on a petition under the Montana Youth Court Act and at any other time specified in that act or other law.

(7) All posttrial motions and other remedies available to an adult in a criminal proceeding under the Montana Code of Criminal Procedure are available to a youth proceeded against under this act.

**History:** En. 19-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977.

#### Amendments

Chapter 100, Laws of 1977, deleted "as set forth in subsection (1) of this section" after "need of supervision" near the beginning of subsection (3); and made minor changes in phraseology, punctuation and style.

Chapter 571, Laws of 1977, substituted "state correctional facility" near the end of subsection (3) for "detention facility or a youth forest camp"; and made minor changes in style.

#### Compiler's Notes

This section was amended twice in 1977, once by Ch. 100 and once by Ch. 571. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

**10-1219. Time limitations on petition hearing.** Unless the allegations of a petition alleging that a youth is a delinquent youth or a youth in need of supervision are determined by a written admission of the allegations by the youth, the petition shall be dismissed with prejudice if a hearing on the petition is not begun within fifteen (15) days after all service is completed. Delays resulting from service of process, or delays resulting from legal actions taken in behalf of the youth, shall not be included in the fifteen (15) day time limitation.

**History:** En. 10-1219 by Sec. 19, Ch. 329, L. 1974.



**10-1220. Adjudicatory hearing.** (1) Prior to any adjudicatory hearing, the court shall determine whether the youth admits or denies the offenses alleged in the petition. If the youth denies all offenses alleged in the petition, the youth, his parent, guardian, or attorney may demand a jury trial on such contested offenses. In the absence of such demand, a jury trial is waived. If the youth denies some offenses and admits others, the contested offenses may be dismissed in the discretion of the youth court judge. The adjudicatory hearing shall be set immediately and accorded a preferential priority.

(2) An adjudicatory hearing shall be held to determine whether the contested offenses are supported by proof beyond a reasonable doubt in cases involving a youth alleged to be delinquent or in need of supervision. If the hearing is before a jury, the jury's function shall be to determine whether the youth committed the contested offenses. If the hearing is before the youth court judge without a jury, the judge shall make and record his findings on all issues. If the allegations of the petitions are not established at the hearing, the youth court shall dismiss the petition and discharge the youth from custody.

(3) An adjudicatory hearing shall be recorded verbatim by whatever means the court considers appropriate.

(4) The youth charged in a petition must be present at the hearing and, if brought from detention to the hearing, may not appear clothed in institutional clothing.

(5) In a hearing on a petition under this section, the general public shall be excluded and only such persons as have a direct interest in the case may be admitted, except that when a hearing in the court is held on a written petition charging the commission of a felony, persons with a legitimate interest in the proceeding, including representatives of public information media, may not be excluded from the hearing.

(6) If, on the basis of a valid admission by a youth of the allegations of the petition or after the hearing required by this section, a youth is found to be a delinquent youth or a youth in need of supervision, the court shall schedule a dispositional hearing under this act.

(7) When a jury trial is required in a case, it may be held before a jury selected as provided in Title 93, chapter 50.

**History:** En. 10-1220 by Sec. 20, Ch. 329, L. 1974; amd. Sec. 7, Ch. 100, L. 1977; amd. Sec. 1, Ch. 344, L. 1977.

#### Compiler's Notes

This section was amended twice in 1977, once by Ch. 100 and once by Ch. 344. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

#### Amendments

Chapter 100, Laws of 1977, inserted

"after the hearing required by this section" in the middle of subsection (6); and made minor changes in phraseology, punctuation and style.

Chapter 344, Laws of 1977, substituted "a jury selected as provided in Title 93, chapter 50" at the end of subsection (7) for "the regular trial panel"; deleted a sentence reading "If the regular panel is not in attendance, the court may draw a jury from jury box No. 3" at the end of subsection (7); and made minor changes in phraseology.

**10-1221. Dispositional hearing.** (1) As soon as practicable after a youth is found to be a delinquent youth or a youth in need of supervision, the court shall conduct a dispositional hearing.

(2) Before conducting the dispositional hearing, the court shall direct that a social summary or predisposition report be made in writing by a probation officer concerning the youth, his family, his environment, and other matters relevant to the need for care or rehabilitation or disposition of the case. The youth court may have the youth examined, and the results of the examination shall be made available to the court as part of the social summary or predisposition report. The court may order the examination of a parent or guardian who gives his consent, and whose ability to care for or supervise a youth is at issue before the court. The results of such examination shall be included in the social summary or predisposition report. The youth, his parents, guardian, or counsel shall have the right to subpoena all persons who have prepared any portion of the social summary or predisposition report and shall have the right to cross-examine said parties at the dispositional hearing.

(3) Defense counsel shall be furnished with a copy of the social summary or predisposition report and psychological report prior to the dispositional hearing.

(4) The dispositional hearing shall be conducted in the manner set forth in section 10-1220, subsections (3), (4), and (5). The court shall hear all evidence relevant to a proper disposition of the case best serving the interests of the youth and the public. Such evidence shall include, but not be limited to, the social summary and predisposition report provided for in subsection (2) of this section.

(5) If the court finds that it is in the best interest of the youth, the youth, his parents, or guardian may be temporarily excluded from the hearing during the taking of evidence on the issues of need for treatment and rehabilitation.

History: En. 10-1221 by Sec. 21, Ch. 329,  
L. 1974.

**10-1222. Disposition of delinquent youth and youth in need of supervision.** (1) If a youth is found to be delinquent or in need of supervision the court may enter its judgment making the following disposition:

- (a) place the youth on probation;
  - (b) place in a licensed foster home or a home approved by the court;
  - (c) place the youth in a private agency responsible for the care and rehabilitation of such a youth, including, but not limited to, a district youth guidance home;
  - (d) transfer legal custody to the department of institutions; provided, however, that in the case of a youth in need of supervision, such transfer of custody shall not authorize the department of institutions to place the youth in a state youth correctional facility and such custody shall not continue for a period of more than six (6) months without a subsequent court order after notice and hearing;
  - (e) such further care and treatment or evaluation that the court deems beneficial to the youth, consistent with subsection (d) of this section.
- (2) At any time after the youth has been taken into custody the court may, with the consent of the youth in the manner provided in

section 10-1218(1), R. C. M. 1947, for consent by a youth to waiver of his constitutional rights, or after the youth has been adjudicated delinquent or in need of supervision:

(a) order the youth to be evaluated for a period not to exceed forty-five (45) days of evaluation at a reception and evaluation center for youths; or

(b) in the case of a delinquent youth sixteen (16) years or older who the court deems a suitable person for placement at a youth forest camp, notify the director of the department of institutions of the finding. The director of the department of institutions shall then designate to the court the facility to which the youth shall be delivered for evaluation. The court may then commit the youth to the department of institutions for a period not to exceed 45 days for the purpose of evaluation as to the youth's suitability for placement, and order the youth delivered for evaluation to the youth facility designated by the director. If after the evaluation, the department of institutions reports to the court that such child is suitable for placement in a youth forest camp, and if there is space available at a camp, the court may then commit such child directly to the youth forest camp under the terms of commitment of this act. If the department of institutions reports and states the reasons to the court why the youth is not suitable for placement, the youth shall be returned to the court for such further disposition as the court may deem advisable under the provisions of this act. The costs of transporting the youth to the designated youth facility for evaluation and cost of returning the youth to the court shall be borne by the county of residence of the youth.

(3) No youth shall be committed or transferred to a penal institution or other facility used for the execution of sentence of adult persons convicted of crimes except as provided by subsection (2)(b) above.

(4) Any order of the court may be modified at any time.

(5) Whenever the court vests legal custody in an agency, institution or department, it must transmit with the dispositional judgment copies of a medical report, and such other clinical, predisposition or other reports and information pertinent to the care and treatment of the youth.

(6) The order of commitment to the department of institutions shall read as follows:

#### ORDER OF COMMITMENT

State of Montana, County of \_\_\_\_\_, ss:

In the district court for the \_\_\_\_\_ judicial district.

On the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, \_\_\_\_\_, a minor of this county, \_\_\_\_\_ years of age, was brought before me charged with \_\_\_\_\_. Upon due proof I find that \_\_\_\_\_ is a suitable person to be committed to the department of institutions.

It is ordered that \_\_\_\_\_ be committed to the department of institutions until \_\_\_\_\_.



The names, addresses and occupations of the parents are:

Name	Address	Occupation

The names and addresses of their nearest relatives are:

Witness my hand this ——— day of ——— A.D. 19—.

Judge

History: En. 10-1222 by Sec. 22, Ch. 329, L. 1974; amd. Sec. 10, Ch. 571, L. 1977.

**Amendments**

The 1977 amendment substituted "state youth correctional facility" near the mid-

dle of subdivision (1)(d) for "detention facility"; deleted "youth detention" before "facility" in the middle of the second sentence of subdivision (2)(b); and made a minor change in style.

**10-1223. Disqualification of judges.** The statutes of the state of Montana relating to disqualification of judges in civil proceedings shall apply to all proceedings under this act.

History: En. 10-1223 by Sec. 23, Ch. 329, L. 1974.

**10-1224. Consent decree with petition.** (1) At any time after the filing of a petition alleging delinquency or need of supervision and before the entry of a judgment, the court may, on motion of counsel for the youth or on the court's own motion, suspend the proceedings and continue the youth under supervision under terms and conditions negotiated with probation services and agreed to by all necessary parties. The court's order continuing the child under supervision under this section shall be known as a "consent decree". The procedures used and dispositions permitted under this section shall conform to the procedure and disposition specified in 10-1210 relating to consent adjustments without petition.

(2) If the youth or his counsel objects to a consent decree, the court shall proceed to findings, adjudication, and disposition of the case.

(3) If, either prior to discharge by probation services or expiration of the consent decree, a new petition alleging delinquency or need of supervision is filed against the youth, or if the youth fails to fulfill the expressed terms and conditions of the consent decree, the petition under which the youth was continued under supervision may be reinstated in the discretion of the county attorney in consultation with probation services. In the event of reinstatement, the proceeding on the petition shall be continued to conclusion, as if the consent decree had never been entered.

(4) A youth who is discharged by probation services or who completes a period under supervision without reinstatement of the original petition may not again be proceeded against in any court for the same offense alleged in the petition, and the original petition shall be dismissed with

prejudice. Nothing in this subsection precludes a civil suit against the youth for damages arising from his conduct.

(5) In all cases where the terms of the consent decree shall extend for a period in excess of 6 months, the probation officer shall at the end of each 6-month period submit a report which shall be reviewed by the court.

History: En. 10-1224 by Sec. 24, Ch. 329,  
L. 1974; amd. Sec. 8, Ch. 100, L. 1977.

#### Amendments

The 1977 amendment substituted "may" for "shall" near the middle of subsection (4); and made minor changes in phraseology, punctuation and style.

**10-1225. Appeals.** (1) Any party other than the state may appeal from a judgment of the court to the supreme court in the manner provided by law. The appeal shall be heard by the supreme court upon the files, records, and transcript of the evidence of the juvenile court.

(2) The appeal to the supreme court does not stay the judgment appealed from, but the supreme court may order a stay upon application and hearing consistent with the provisions of this act if suitable provision is made for the care and custody of the youth. If the order appealed from grants the legal custody of the youth to, or withholds it from, one (1) or more of the parties to the appeal, the appeal shall be heard at the earliest practicable time.

History: En. 10-1225 by Sec. 25, Ch. 329,  
L. 1974.

**10-1226. Court costs and expenses.** The following expenses shall be a charge upon the funds of the court or other appropriate agency when applicable, upon their certification by the court:

(1) the costs of medical and other examinations and treatment of a youth ordered by the court;

(2) reasonable compensation for services and related expenses for counsel appointed by the court for a party;

(3) the expenses of service of summons, notices, subpoenas, traveling expenses of witnesses and other like expenses incurred in any proceeding under the Montana Youth Court Act as provided for by law;

(4) reasonable compensation of a guardian ad litem appointed by the court; and

(5) cost of transcripts and printing briefs on appeal.

History: En. 10-1226 by Sec. 26, Ch. 329,  
L. 1974.

**10-1227. Use of private agencies by public agency.** When the legal custody of a youth is vested in a public agency under the provisions of this act the public agency may transfer physical custody of the youth to an appropriate private agency and may purchase care and treatment from the private agency if the private agency submits periodic reports to the public agency covering the care and treatment the youth is receiving and the youth's responses to that care and treatment. These reports shall be made as frequently as the public agency or the court

deems necessary but not less often than once each six (6) months for each youth. The private agency shall also afford an opportunity for a representative of the public agency to examine or consult with the youth as frequently as the public agency deems necessary.

History: En. 10-1227 by Sec. 27, Ch. 329,  
L. 1974.

**10-1228. Probation revocation—disposition.** A youth on probation incident to an adjudication that he is a delinquent youth or a youth in need of supervision and who violates a term of such probation may be proceeded against in a probation revocation proceeding. A proceeding to revoke probation shall be done by filing in the original proceeding a petition styled "petition to revoke probation." Petitions to revoke probation shall be screened, reviewed and prepared in the same manner and shall contain the same information as petitions alleging delinquency or need of supervision. Procedures of the Montana Youth Court Act regarding taking into custody and detention shall apply. The petition shall state the terms of probation alleged to have been violated and the factual basis for such allegations. The standard of proof in probation revocation proceedings is the same standard used in probation revocation of an adult and the hearing shall be before the youth court without a jury. In all other respects proceedings to revoke probation are governed by the procedures, rights and duties applicable to proceedings on petitions alleging that the youth is delinquent or a youth in need of supervision. If a youth is found to have violated a term of his probation, the youth court may make any judgment of disposition that could have been made in the original case.

History: En. 10-1228 by Sec. 28, Ch. 329,  
L. 1974.

**10-1229. Transfer to criminal court.** (1) After a petition has been filed alleging delinquency, the court may, upon motion of the county attorney, before hearing the petition on its merits, transfer the matter of prosecution to the district court if:

(a) the youth charged was 16 years of age or more at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

- (i) criminal homicide as defined in 94-5-101;
- (ii) arson as defined in 94-6-104;
- (iii) aggravated assault as defined in 94-5-202;
- (iv) robbery as defined in 94-5-401;
- (v) burglary or aggravated burglary as defined in 94-6-204;
- (vi) sexual intercourse without consent as defined in 94-5-503;
- (vii) aggravated kidnapping as defined in 94-5-303;
- (viii) possession of explosives as defined in 94-6-105;
- (ix) criminal sale of dangerous drugs for profit as included in 54-

132;

(b) a hearing on whether the transfer should be made is held in conformity with the rules on a hearing on a petition alleging delinquency, except that the hearing will be to the youth court without a jury;



(c) notice in writing of the time, place, and purpose of the hearing is given to the youth, his counsel, and his parents, guardian, or custodian at least 10 days before the hearing; and

(d) the court finds upon the hearing of all relevant evidence that there are reasonable grounds to believe that:

(i) the youth committed the delinquent act alleged;

(ii) the seriousness of the offense and the protection of the community require treatment of the youth beyond that afforded by juvenile facilities; and

(iii) the alleged offense was committed in an aggressive, violent, or premeditated manner.

(2) In transferring the matter of prosecution to the district court, the court shall also consider the following factors:

(a) the sophistication and maturity of the youth, determined by consideration of his home, environmental situation, and emotional attitude and pattern of living;

(b) the record and previous history of the youth, including previous contacts with the youth court, law enforcement agencies, youth courts in other jurisdictions, prior periods of probation, and prior commitments to juvenile institutions;

(c) the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the youth by the use of procedures, services, and facilities currently available to the youth court.

(3) Upon transfer to district court, the judge shall make written findings of the reasons why the jurisdiction of the court was waived and the case transferred to district court.

(4) The transfer terminates the jurisdiction of the court over the youth with respect to the acts alleged in the petition. No youth may be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been transferred as provided in this section.

(5) Upon order of the court transferring the case to the district court, the county attorney shall file the information against the youth without unreasonable delay.

(6) If a youth is found guilty in district court of any of the offenses enumerated in subsection (1)(a) of this section and is sentenced to the state prison, his commitment shall be to the department of institutions which shall confine the youth in whatever institution it considers proper.

**History:** En. 10-1229 by Sec. 29, Ch. 329, L. 1974; amd. Sec. 9, Ch. 100, L. 1977.

#### **Amendments**

The 1977 amendment substituted "may" for "shall" near the middle of subsection (4); substituted "(1)(a)" for "(2)(a)" in subsection (6); and made minor changes in phraseology, punctuation and style.

#### **Factors Court Must Consider**

When juvenile was arrested and charged

with attempted robbery, robbery, and aggravated assault, and state attempted to waive him to adult criminal court, evidence presented at transfer hearing was insufficient to waive jurisdiction because state failed to present evidence concerning requirements in section 10-1229(1)(d)(ii), (2)(a), or (2)(c), and cause was remanded to youth court. In re Stevenson, — M —, 538 P 2d 5.

## DECISIONS UNDER FORMER LAW

**Constitutional Requirements**

Conventional findings of fact or an express, formal statement of the reasons for ordering the waiver and transfer to the district court are not required; if the reasons motivating the exercise of the juvenile court's discretion in ordering the waiver and transfer are sufficiently apparent in the record to allow meaningful appellate review, constitutional requirements are satisfied. Transfer of defendant to district court on charge of second degree assault was not an abuse of discretion where at the time of the commission of the crime the defendant was a juvenile by less than one month, the victim was brutally assaulted without provocation, the defendant was far removed from influences of family, home or normal adult supervision, and trial court found that the

probable cause was of such a nature that failure to bring the defendant to trial on the charge of second degree assault would have failed to preserve the best and necessary interest of the people of the state of Montana. *Lujan v. District Court, Fourth Judicial Dist., — M —, 505 P 2d 896.*

Refusal by judge of juvenile court to permit extended oral argument by defendant's counsel on legal questions concerning the philosophy, intent, and purpose of the Juvenile Court Act and the legal requirements relating to juvenile court transfer proceedings did not constitute a denial of due process nor a denial of an opportunity to present evidence in opposition to transferring the case from juvenile court to adult criminal court. *Lujan v. District Court, Fourth Judicial Dist., — M —, 505 P 2d 896.*

**10-1230. Law enforcement records.** (1) No law enforcement records concerning a youth, except traffic records, may be open to public inspection or their contents disclosed to the public unless so ordered by the court.

(2) Inspection of law enforcement records concerning a youth is permitted prior to the sealing of the records by:

- (a) a youth court having the youth currently before it in any proceeding;
- (b) the officers of agencies having legal custody of the youth and those responsible for his supervision after release;
- (c) any other person, by order of the court, having a legitimate interest in the case or in the work of the law enforcement agency;
- (d) law enforcement officers of Montana, when necessary for the discharge of their immediate duties;
- (e) a district court in which the youth is convicted of a criminal offense, for the purpose of a presentence investigation;
- (f) the county attorney; or
- (g) the youth, his parent, guardian, or counsel.

**History:** En. 10-1230 by Sec. 30, Ch. 329, L. 1974; amd. Sec. 10, Ch. 100, L. 1977.

**Amendments**

The 1977 amendment added "investigation" at the end of subdivision (2)(e); and made minor changes in phraseology and punctuation.

**10-1231. Youth court records.** (1) Youth court records, including social, medical and psychological records, reports of preliminary inquiries, predispositional studies and supervision records of probationers, are open to inspection prior to the sealing of the records only to the following:

- (a) the youth court and its professional staff;
- (b) representatives of any agency providing supervision and having legal custody of a youth;

(c) any other person, by order of the court, having a legitimate interest in the case or in the work of the court;

(d) any court and its probation and other professional staff, or the attorney for a convicted party, who had been a party to proceedings in the youth court when considering the sentence to be imposed upon such party;

(e) the county attorney;

(f) the youth who is the subject of the report or record, after he has been emancipated or reaches the age of majority.

(2) All or any part of records information secured from records listed in subsection (1) of this section, when presented to and used by the court in a proceeding under this act, shall also be made available to the counsel for the parties to the proceedings.

(3) All other court records, including docket, petitions, motions and other papers filed in a case, transcripts of testimony, findings, verdicts, orders and decrees shall be open to inspection by those persons and agencies listed in subsection (1) of this section, and the parties to the proceedings and their counsel.

(4) All information obtained in discharge of an official duty by any officer or other employee of the youth court shall be privileged and shall not be disclosed to anyone other than the judge and others entitled under this act to receive such information, unless otherwise ordered by the judge.

History: En. 10-1231 by Sec. 31, Ch. 329,  
L. 1974.

**10-1232. Disposition of records.** (1) All court findings, orders, judgments and the legal and social files and records of the court, probation services and law enforcement agencies pertaining to a youth coming under this act shall be physically sealed when the youth reaches the age of eighteen (18) years.

(2) In those cases in which jurisdiction of the court or any agency is extended beyond the youth's eighteenth birthday the above records and files shall be physically sealed upon termination of the extended jurisdiction.

(3) Youth court records, probation officer's records, and all other reports of social and clinical studies shall not be opened to inspection except by consent of the court or the youth, upon petition to the youth court.

(4) Upon the physical sealing of the records pertaining to a youth pursuant to this section any agency or department that has in its possession copies of the records so sealed shall also seal or destroy such copies of records. Anyone violating the provisions of this subsection shall be subject to contempt of court.

(5) Nothing herein contained shall prohibit the destruction of such records with the consent of the youth court judge or county attorney after ten (10) years from the date of sealing. The records of youths who were



twenty-eight (28) years old or older on July 1, 1974, may be destroyed with the consent of the youth court judge or county attorney.

(6) This section shall not apply to youth traffic records.

History: En. 10-1232 by Sec. 32, Ch. 329, L. 1974; amd. Sec. 1, Ch. 59, L. 1975.

#### Amendments

The 1975 amendment added the second sentence to subsection (5).

**10-1233. Youth court judge.** (1) Each judicial district in the state shall have at least one (1) judge of the youth court. His duties shall be:

- (a) to appoint and supervise qualified personnel to staff the youth division probation departments within the judicial district;
- (b) to conduct hearings on youth court proceedings under this act;
- (c) to perform any other functions consistent with the legislative purpose of this act.

(2) In each multi-judge judicial district the judges shall, by court rule, designate one of their number to act as youth court judge in each county in the judicial district for a fixed period of time. Service as youth court judge may be rotated among the different judges of the judicial district and among the individual counties within the judicial district for given periods of time. Continuity of service of a given judge as youth court judge and continuity in the operation and policies of the youth court in the county having the largest population in the judicial district shall be the principal consideration of the rule.

If the judges in any multi-judge judicial district do not establish such court rule within sixty (60) days of the enactment of the Montana Youth Court Act, the Montana supreme court shall establish an appropriate rule for such judicial district.

History: En. 10-1233 by Sec. 33, Ch. 329, L. 1974.

**10-1234. Probation officers—powers—duties—qualifications.** (1) The youth division judge of each judicial district shall appoint such necessary probation officers as are required to carry out the purpose and intent of this act. He shall appoint such part-time probation officers as shall be required. The qualifications for part-time probation officers shall approximate those required for probation officers in so far as possible. A chief probation officer shall be appointed by the judge to supervise the youth division offices in the judicial district. The judge shall also ensure that the youth division offices are staffed with necessary office personnel and that the offices are properly equipped to effectively carry out the purpose and intent of this act. No person while serving as a law enforcement officer shall be appointed or perform the duties of a full-time or part-time probation officer.

(2) Any person appointed as a chief probation officer must have the following qualifications:

- (a) a master's degree in the behavioral sciences or;
- (b) a bachelor's degree from an accredited college or university in the behavioral sciences, and at least one (1) year's experience in work of

a nature related to the duties of a probation officer as set forth in subsection (4) of this section; or

(c) a bachelor's degree in any field and at least three (3) years' experience in work related to the duties of a probation officer as set forth in subsection (4) of this section.

(d) The judge may appoint any reputable person as a probation officer who has had experience in work of a nature related to the duties of a chief probation officer; provided, preference shall be given to persons with the qualifications set forth in subsection (2) above.

(4) A probation officer shall:

(a) perform the duties set out in section 10-1210;

(b) make predisposition studies and submit reports and recommendations to the court;

(c) supervise, assist and counsel youth placed on probation or under his supervision;

(d) perform any other functions designated by the court.

(5) A probation officer shall have no power to make arrests or to perform any other law enforcement functions in carrying out his duties except that a probation officer may take into custody any youth who violates either his probation or a lawful order of the court.

(6) A chief probation officer shall receive for his services a sum specified by the court; however, the judge may employ him on a yearly salary, not to be less than twelve thousand five hundred dollars (\$12,500) nor more than sixteen thousand dollars (\$16,000) depending on the formal training and experience of each respective officer. The salary of such officer shall be apportioned among and paid by each of the counties in which such officer is appointed to act, in proportion to the assessed valuation of such counties for the same year, except where such officer is appointed for one (1) county whereby such county shall pay the entire salary.

The judge having jurisdiction of juvenile matters may also appoint such additional persons giving preference to persons having the qualifications suggested for appointment as the chief probation officer to serve as deputy probation officers as the judge deems necessary; their salaries to be fixed by the judge, provided that such salaries shall not exceed ninety per cent (90%) of the salary of the chief probation officer.

For all necessary travel incident to his official duties in connection with the investigation, supervision, and transportation of youth, the probation officer shall, in addition to his office salary, be reimbursed for actual expenses incurred.

**History:** En. 10-1234 by Sec. 34, Ch. 329, L. 1974; amd. Sec. 1, Ch. 530, L. 1975.

#### Compiler's Notes

This section as enacted contained no subsection (3).

#### Amendments

The 1975 amendment deleted "upon appointment" after "sum specified by the

court" near the beginning of subsection (6); increased the salary of the chief probation officer from "not to exceed eleven thousand dollars (\$11,000) or on a per diem basis at the rate of forty dollars (\$40) per day for the time actually and necessarily employed in performing the duties of the office" to the present \$12,000 to \$16,000 "depending on the formal training and experience of each respective offi-

cer"; and deleted "at the time of appointment" after "fixed by the judge" in the second paragraph of subsection (6).

#### Maximum Salary

Section 2 of Ch. 530, Laws 1975 read "Notwithstanding the provisions of section 34 of chapter 329 of the session laws of Montana of 1974, it is the intent of the legislature that the maximum salary for youth court probation officers from July 1, 1974, until the effective date of this act

be governed by section 1 of chapter 241 of the session laws of 1974 providing for a maximum annual salary of twelve thousand five hundred dollars (\$12,500) per annum or forty-five dollars (\$45) per diem. Youth court probation officers shall not be required to repay amounts in excess of the limit set by chapter 329 received as compensation for services rendered during that period if the amount was less than the limit set by chapter 241."

**10-1235. Order of adjudication—noncriminal.** No commitment of any youth to any state youth correctional facility under this act shall be deemed commitment to a penal institution. No adjudication upon the status of any youth in the jurisdiction of the court shall operate to impose any of the civil disability imposed on a person by reason of conviction of a criminal offense, nor shall such adjudication be deemed a criminal conviction, nor shall any youth be charged with or convicted of any crime in any court except as provided in this act. Neither the disposition of a youth under this act, nor evidence given in youth court proceedings under this act, shall be admissible in evidence except as otherwise provided in this act.

**History:** En. 10-1235 by Sec. 35, Ch. 329, L. 1974; amd. Sec. 11, Ch. 571, L. 1977.

#### Amendments

The 1977 amendment substituted "state youth correctional facility" near the beginning of the section for "institution."

**10-1236. Shelter care and foster homes.** (1) The youth court may establish procedures for finding, maintaining, and administering shelter care and foster homes or other homes approved by the court for youth within the provisions of this act.

(2) All foster homes established by the youth court which are licensed by the department of social and rehabilitation services, shall be financed by the department as set forth in 71-210(b).

(3) The licensed shelter care and foster homes established under this section shall be funded at a rate consistent with other shelter care and foster homes established for other purposes under law. Shelter care as defined by this act may be funded through state appropriation to the youth courts and the departments of institutions and social and rehabilitation services.

**History:** En. 10-1236 by Sec. 36, Ch. 329, L. 1974; amd. Sec. 11, Ch. 100, L. 1977; amd. Sec. 12, Ch. 571, L. 1977.

#### Compiler's Notes

This section was amended twice in 1977, once by Ch. 100 and once by Ch. 571. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

#### Amendments

Chapter 100, Laws of 1977, deleted "licensed" before "foster homes" near the

beginning of subsection (1); redesignated former subsection (2) as subsection (3); redesignated former subsection (3) as subsection (2); inserted "established by the youth court" in subsection (2); and made minor changes in phraseology and punctuation.

Chapter 571, Laws of 1977, inserted "shelter care and" before "foster homes" throughout the section; deleted "temporary and permanent" after "maintaining and administering" near the middle of subsection (1); added the second sentence of subsection (2) (now subsection (3)); and made a minor change in style.



**10-1237. Shelter care and detention facilities.** (1) In all counties the county commissioners may provide by purchase, lease, or otherwise, a place to be known as the youth detention facility, which shall not be used for the confinement of adult persons charged with criminal offenses, where delinquent youths, and youth in need of supervision may be detained until final disposition, which place shall be maintained by the county as in other like cases. The judge having jurisdiction may appoint such personnel as required, who shall have charge of said facility and of the youths detained therein.

The compensation of such personnel shall be fixed by the court, and such compensation and the maintaining of such facility shall be paid out of the county treasury which may be supplemented by state appropriation and federal funds.

(2) Youth courts and nonprofit corporations may provide by purchase, lease, or otherwise, a place to be known as a shelter care facility. Such facility shall be physically unrestricting and may be used to provide shelter care for youth alleged or adjudicated delinquent, in need of supervision, or in need of care. Such facility shall be separate and apart from any facility housing adults charged with criminal offenses. State appropriations and federal funds may be received by the youth court or private nonprofit corporations for establishment, maintenance, or operation of such facility. Such facility shall be furnished in a comfortable manner and be as nearly as possible like a family home.

**History:** En. Sec. 26, Ch. 227, L. 1943; Sec. 10-627, R. C. M. 1947; amd. and redes. 10-1237 by Sec. 37, Ch. 329, L. 1974; amd. Sec. 13, Ch. 571, L. 1977.

#### Amendments

The 1974 amendment renumbered this section; substituted "Youth detention home" for "Foster homes—youth home" in the caption; deleted a paragraph providing for selection of foster homes by the chief probation officer in each county; substituted "youth detention home" for "youth home" in the first sentence of the first paragraph; substituted references to "youths and youth in need of supervision"

for references to "delinquent children" and to "children"; substituted "such personnel as required" for "a superintendent and a matron" in the last sentence of the first paragraph; and made minor changes in phraseology and punctuation.

The 1977 amendment inserted the subsection designations; substituted "facility" for "home" throughout the section; added "which may be supplemented by state appropriation and federal funds" to the second paragraph of subsection (1); inserted the first four sentences of subsection (2); and made minor changes in phraseology and punctuation.

**10-1238. Support of youth committed to a custodial agency.** When a youth under this act is committed by the court to custody other than that of its parents, and no provision is otherwise made by law for the support of such youth, compensation for the care of such youth, when approved by order of the court, shall be a charge upon the county, or the appropriate division thereof. But the court may, after giving the parent a reasonable opportunity to be heard, adjudge and order that such parent shall pay in such manner as the court may direct, such sum as will cover, in whole or in part, the support of such youth. In determining the amount the parents must pay, the court shall use the standards set out in Title 80, chapter 16, and the department of institution's rules governing payment for care of residents of institutions, as those provisions and rules apply to the youth and parents before the court. If such parent shall willfully fail or refuse

to pay such sum, he may be proceeded against as provided by law for cases of desertion or failure to provide subsistence, or said cost may be collected in a civil action against the parent or parents.

**History:** En. Sec. 14, Ch. 227, L. 1943; amd. Sec. 7, Ch. 276, L. 1947; Sec. 10-615, R. C. M. 1947; amd. and redes. 10-1238 by Sec. 38, Ch. 329, L. 1974; amd. Sec. 8, Ch. 450, L. 1977.

#### Amendments

The 1974 amendment renumbered this section; substituted "youth under this act" for "delinquent child" in the first sentence;

substituted "youth" for "delinquent child" in the caption and throughout the section; and inserted "provided, however, that such sum shall not exceed the cost of reasonable care of a normal youth at home" in the last sentence.

The 1977 amendment substituted the third sentence for the proviso inserted by the 1974 amendment.

### 10-1239. [Transferred from Chapter 6.]

#### Compiler's Notes

This section was originally numbered 10-631. Section 39, Ch. 329, Laws of 1974 renumbered it to appear here. Because there

has been no change in text, the section is not reprinted here but may be found in bound Volume 1, part 2, as sec. 10-631.

**10-1240. Youth court committee.** In every county of the state the judge having jurisdiction may appoint a committee, willing to act without compensation, composed of not less than three (3) nor more than seven (7) reputable citizens, including youth representatives, which committee shall be designated as a youth court committee; this committee shall be subject to the call of the judge to meet and confer with him on all matters pertaining to the youth department of the court, including the appointment of probation officers, and shall act as a supervisory committee of youth detention homes.

**History:** En. Sec. 27, Ch. 227, L. 1943; amd. Sec. 1, Ch. 128, L. 1957; amd. Sec. 13, Ch. 262, L. 1969; Sec. 10-628, R. C. M. 1947; amd. and redes. 10-1240 by Sec. 40, Ch. 329, L. 1974.

#### Amendments

The 1974 amendment renumbered this section; substituted "youth court committee" for "juvenile court committee" in

the caption and in the text of the section; inserted "including youth representatives" after "reputable citizens"; substituted "youth department" for "juvenile department"; inserted "including the appointment of probation officers" after "youth department of the court"; and substituted "youth detention homes" for "detention homes, and in the selection of foster homes" at the end of the section.

**10-1241. Publicity.** No publicity shall be given to the identity of an arrested youth or to any matter or proceeding in the youth court involving a youth proceeded against as, or found to be a delinquent youth or youth in need of supervision except as provided in section 10-1220(5), R. C. M. 1947.

**History:** En. 10-1241 by Sec. 41, Ch. 329, L. 1974.

**10-1242. Establishment of district youth guidance home program.** The legislature, in recognition of the wide and varied needs of delinquent youths and youths in need of supervision of this state and of the desirability of meeting these needs on a community level to the fullest extent possible and in order to reduce the need for custodial care in existing state youth correctional facilities establishes by 10-1242 through 10-1252 a district youth guidance home program to provide facilities and services for the rehabili-

tation of delinquent youths and youths in need of supervision and establishes a program to provide such facilities and services through local non-profit corporations and the department of institutions.

**History:** En. Sec. 1, Ch. 427, L. 1971; Sec. 10-1101, R. C. M. 1947; amd. and redes. 10-1242 by Sec. 42, Ch. 329, L. 1974; amd. Sec. 12, Ch. 100, L. 1977; amd. Sec. 14, Ch. 571, L. 1977.

#### Compiler's Notes

This section was amended twice in 1977, once by Ch. 100 and once by Ch. 571. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

#### Title of Act

An act providing for nonprofit organizations to establish district youth guidance homes for delinquent and other children; providing for committal of juvenile delinquents and other juveniles to district youth guidance homes; providing authority

to department of institutions to make rules and regulations for the operation of such homes.

#### Amendments

The 1974 amendment renumbered this section; substituted "delinquent youth and youth in need of supervision" for "juvenile delinquents and juveniles" in two places and made minor changes in phraseology.

Chapter 100, Laws of 1977, substituted "10-1242 through 10-1252" in the middle of the section for "this act"; and made minor changes in phraseology and punctuation.

Chapter 571, Laws of 1977, substituted "state youth correctional facilities" in the middle of the section for "state institutions."

#### 10-1243. Definitions. For purposes of this act:

- (1) Delinquent youth. A youth as defined in section 10-1203(12).
- (2) A youth in need of supervision. A youth as defined in section 10-1203(13).
- (3) District youth guidance home. A district youth guidance home is a family-oriented residence established in a judicial district of the state of Montana as an alternative to existing state youth correctional facilities, the function of which is to provide a home and guidance through adult supervision for delinquent youths and youths in need of supervision.

**History:** En. Sec. 2, Ch. 427, L. 1971; Sec. 10-1102, R. C. M. 1947; amd. and redes. 10-1243 by Sec. 43, Ch. 329, L. 1974; amd. Sec. 15, Ch. 571, L. 1977.

#### Amendments

The 1974 amendment renumbered this section; substituted definitions of "Delinquent youth" and "A youth in need of supervision" for definitions of "Juvenile delinquent" and "A juvenile tending to-

ward delinquency" in subdivisions (a) and (b) and substituted "delinquent youth and youths in need of supervision" for "juvenile delinquents and juveniles tending toward delinquency" at the end of subdivision (c).

The 1977 amendment redesignated subdivisions (a) to (c) as subdivisions (1) to (3); and substituted "youth correctional facilities" for "institutions" in subdivision (3).

**10-1244. Nonprofit corporations to establish homes authorized—power to receive facilities and funds.** Nonprofit corporations or associations in any judicial district may be formed or organized for the purpose of establishing under this act district youth guidance homes and to receive from the department of institutions and other governmental units such services, facilities and funds as the department or other governmental units may be authorized to provide by law.

**History:** En. Sec. 3, Ch. 427, L. 1971; Sec. 10-1103, R. C. M. 1947; redes. 10-1244 by Sec. 44, Ch. 329, L. 1974.



**10-1245. Governmental aid to nonprofit organizations.** (1) The department of institutions shall be authorized to contract with nonprofit corporations or associations, to provide facilities and services for delinquent youths and youths in need of supervision in district youth guidance homes, and is authorized to expend such moneys as shall be appropriated or available therefor.

(2) Governmental units, including but not limited to counties, municipalities, school districts, or state institutions of higher learning are hereby authorized, at their own expense, to provide funds, materials, facilities and services for district youth guidance homes.

**History:** En. Sec. 4, Ch. 427, L. 1971; Sec. 10-1104, R. C. M. 1947; amd. and redes. 10-1245 by Sec. 45, Ch. 329, L. 1974.

#### **Amendments**

The 1974 amendment renumbered this section; substituted "delinquent youths and youths in need of supervision" for "juvenile delinquents and juveniles" in subsection (1).

**10-1246. Authority of youth court judge to commit delinquent youths and youths in need of supervision.** A youth court judge is hereby authorized in his discretion to place a delinquent youth or a youth in need of supervision in a district youth guidance home for any period of time up to the child's 21st birthday subject to the approval of its sponsoring nonprofit corporation or association.

**History:** En. Sec. 5, Ch. 427, L. 1971; Sec. 10-1105, R. C. M. 1947; amd. and redes. 10-1246 by Sec. 46, Ch. 329, L. 1974; amd. Sec. 13, Ch. 100, L. 1977.

#### **Amendments**

The 1974 amendment renumbered this section and substituted "youth court

judge" for "district judge" and "delinquent youth and youths in need of supervision" for "juvenile delinquent or juvenile" in the caption and in the text of the section.

The 1977 amendment made minor changes in phraseology and style.

**10-1247. Petition by person under twenty-one (21) to be placed in district youth guidance home.** Any person under the age of eighteen (18) years, or any person between the ages of eighteen (18) and twenty-one (21) years, who is still within the jurisdiction of the youth court may petition the youth court of a district in which a district youth guidance home has been established to be placed in a district youth guidance home for any period of time up to said person's twenty-first birthday.

**History:** En. Sec. 6, Ch. 427, L. 1971; Sec. 10-1106, R. C. M. 1947; amd. and redes. 10-1247 by Sec. 47, Ch. 329, L. 1974.

#### **Amendments**

The 1974 amendment renumbered and rewrote this section which read: "Any

person under the age of twenty-one (21) years may petition the district court of a district in which a district youth guidance home has been established to be placed to a district youth guidance home for any period of time up to said person's twenty-first birthday."

**10-1248. Continuing jurisdiction of youth court over youths.** The youth court placing a delinquent youth or a youth in need of supervision in a district youth guidance home shall retain continuing jurisdiction over the youth until the youth becomes 21 years of age or is otherwise discharged by order of the court.

**History:** En. Sec. 7, Ch. 427, L. 1971; Sec. 10-1107, R. C. M. 1947; amd. and redes. 10-1248 by Sec. 43, Ch. 329, L. 1974; amd. Sec. 14, Ch. 100, L. 1977.

#### Amendments

The 1974 amendment renumbered this section; substituted "youth court" for "district court" in the caption and in the text

of the section; substituted "delinquent youth or a youth in need of supervision" for "juvenile or juvenile tending toward delinquency"; and substituted "youths" and "youth" for "juvenile" in the caption and throughout the section.

The 1977 amendment made minor changes in phraseology and style.

**10-1249. Per diem charge to financially able parents.** A youth court judge placing a delinquent youth or a youth in need of supervision in a district youth guidance home may require the parents or parent to pay to the district youth guidance home a per diem charge as the judge may determine under the standards set out in Title 80, chapter 16, and the department of institution's rules governing payments for care of residents of institutions, as those provisions and rules apply to the youth and parent or parents before the court.

**History:** En. Sec. 3, Ch. 427, L. 1971; Sec. 10-1108, R. C. M. 1947; amd. and redes. 10-1249 by Sec. 49, Ch. 329, L. 1974; amd. Sec. 15, Ch. 100, L. 1977; amd. Sec. 9, Ch. 450, L. 1977.

#### Compiler's Notes

This section was amended twice in 1977, once by Ch. 100 and once by Ch. 450 which amended Ch. 100.

#### Amendments

The 1974 amendment renumbered this section; substituted "A youth court judge" for "A district judge" at the beginning of the section; substituted "delinquent youth or a youth in need of supervision" for "juvenile delinquent or a juvenile tending toward delinquency"; substituted "youth" for "juvenile" and "child"; and made a minor change in phraseology.

Chapter 100, Laws of 1977, substituted "as the judge may determine" after "charge" near the middle of the section for "not to exceed the per diem charge established by the department of institutions for each youth placed in the Montana children's center"; and made a minor change in phraseology.

Chapter 450, Laws of 1977, amended Ch. 100, Laws of 1977 by deleting "if the parent or parents of the youth are financially able, without undue hardship" before "require the parents" in the middle of the section; deleting "as the judge may determine" after "charge" (purported to be the existing language and the last five words of the section); adding everything after "charge"; and making a minor change in phraseology.

**10-1250. Placement of youths by department of institutions.** The department of institutions is hereby authorized as part of its aftercare program to place a delinquent youth or a youth in need of supervision in a district youth guidance home subject to the approval of its sponsoring non-profit corporation or association.

**History:** En. Sec. 9, Ch. 427, L. 1971; Sec. 10-1109, R. C. M. 1947; amd. and redes. 10-1250 by Sec. 50, Ch. 329, L. 1974.

#### Amendments

The 1974 amendment substituted

"youths" for "juveniles" in the caption and substituted "delinquent youths or a youth in need of supervision" for "juvenile delinquent."

**10-1251. Rules.** The director of the department of institutions may adopt reasonable rules and standards to carry out the administration and purposes of 10-1242 through 10-1252.

**History:** En. Sec. 10, Ch. 427, L. 1971; Sec. 10-1110, R. C. M. 1947; redes. 10-1251 by Sec. 51, Ch. 329, L. 1974; amd. Sec. 16, Ch. 100, L. 1977.

#### Amendments

The 1977 amendment deleted "regulations" before "and standards"; and made minor changes in phraseology.

**10-1252. Federal assistance.** The department of institutions may make application for and receive federal-aid money or other assistance which might become available for programs in the nature of the one created by 10-1242 through 10-1252.

**History:** En. Sec. 11, Ch. 427, L. 1971; Sec. 10-1111, R. C. M. 1947; redes. 10-1252 by Sec. 52, Ch. 329, L. 1974; amd. Sec. 17, Ch. 100, L. 1977.

#### Amendments

The 1977 amendment made minor changes in phraseology.

#### Separability Clause

Section 12 of Ch. 427, Laws 1971 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one (1) or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

### CHAPTER 13—ABUSED, NEGLECTED AND DEPENDENT CHILDREN OR YOUTH

#### Section

- 10-1300. Declaration of policy.
- 10-1301. Definitions.
- 10-1302. Jurisdiction and venue.
- 10-1303. Declaration of policy.
- 10-1304. Reports.
- 10-1305. Action on reporting.
- 10-1306, 10-1307. [Transferred from Chapter 9.]
- 10-1308. Confidentiality.
- 10-1309. Emergency protective service.
- 10-1310. Petitions.
- 10-1311. Petition for temporary investigative authority and protective services.
- 10-1312. Hearing.
- 10-1313. Investigation of parents' financial ability.
- 10-1314. Judgment.
- 10-1315. Responsibility of providing protective services.
- 10-1316. [Transferred from Chapter 5.]
- 10-1317. License required.
- 10-1318. Issuance of license—authority of issuing agency.
- 10-1319. [Transferred from Chapter 5.]
- 10-1320. Payment for support of dependent and neglected children—reimbursement by county.
- 10-1321. Recovery from parents—division between state and county.
- 10-1322. Punishment of parents and other adults.

**10-1300. Declaration of policy.** It is hereby declared to be the policy of the state of Montana:

- (1) to ensure that all youth are afforded an adequate physical and emotional environment to promote normal development;
- (2) to compel in proper cases the parent or guardian of a youth to perform the moral and legal duty owed to the youth;
- (3) to achieve these purposes in a family environment whenever possible; and
- (4) to preserve the unity and welfare of the family whenever possible.

**History:** En. 10-1300 by Sec. 1, Ch. 328, L. 1974.

#### Title of Act

An act for the general revision of the



laws relating to abused, neglected and dependent children or youth; and repealing

sections 10-501 through 10-519, R. C. M. 1947.

**10-1301. Definitions.** (1) "Child" or "youth", for purposes of this act, means any person under 18 years of age.

(2) "Abuse" or "neglect" means:

(a) the commission or omission of any act or acts which materially affect the normal physical or emotional development of a youth. Any excessive physical injury, sexual assault, or failure to thrive, taking into account the age and medical history of the youth, shall be presumed to be nonaccidental and to "materially affect" the normal development of the youth.

(b) the commission or omission of any act or acts by any person in the status of parent, guardian, or custodian who thereby and by reason of physical or mental incapacity or other cause refuses or, with state and private aid and assistance is unable, to discharge the duties and responsibilities for proper and necessary subsistence, education, medical, or any other care necessary for the youth's physical, moral, and emotional well-being.

(3) "Dependent youth" means a youth who is abandoned, dependent upon the public for support, destitute, without parents or guardian or under the care and supervision of a suitable adult, or who has no proper guidance to provide for his necessary physical, moral, and emotional well-being. A child may be considered dependent and legal custody transferred to a licensed agency if the parent or parents voluntarily relinquish custody of the child.

(4) "Youth in need of care" means a youth who is dependent or is suffering from abuse or neglect within the meaning of this act.

**History:** En. 10-1301 by Sec. 2, Ch. 328, L. 1974; amd. Sec. 18, Ch. 100, L. 1977.

#### **Constitutionality**

This section is not unconstitutionally vague, ambiguous or uncertain. Matter of Burgdorf, — M —, 551 P 2d 656.

#### **Amendments**

The 1977 amendment substituted "presumed to be nonaccidental and to 'materially affect' the normal development of the youth" at the end of subdivision (2) (a) for "presumptive of 'material affect' and nonaccidental"; and made minor changes in phraseology, punctuation and style.

#### **Neglect**

Children who have become mentally retarded due to emotional deprivation and lack of environmental stimulation are neglected children within the meaning of the law. In re Olson, — M —, 524 P 2d 779.

### **DECISIONS UNDER FORMER LAW**

#### **Fitness of Parents**

Evidence of mother's use of welfare funds to supply her alcoholic needs, lack of medical care for her children, threats to kill the children and other failures to make proper provision for the children, warranted a finding that the children were neglected and the entry of an order committing them to custody of the state. In re Corneliusen, 159 M 6, 494 P 2d 908.

A child was provisorily found dependent and neglected based on mother's declaration in waiver and the consent to adoption

that she could not provide care and guidance and could not perform duties of a parent. Application of Hendrickson, 159 M 217, 496 P 2d 1115.

Minor children were dependent and neglected within meaning of the statutory definition, notwithstanding possible fitness of natural mother for their custody, where she had acquiesced and permitted them to remain in care and custody of welfare department. In re Bad Yellow Hair, — M —, 509 P 2d 9, 12.

**10-1302. Jurisdiction and venue.** (1) In all matters arising under this act, the youth court shall have concurrent jurisdiction with the district courts over all youths who are within the state of Montana for any purpose, or any youth or other person subject to this act who under a temporary or permanent order of the court has voluntarily or involuntarily removed himself from the state or the jurisdiction of the court, or any person who is alleged to have abused, neglected or caused the dependency of a youth who is in the state of Montana for any purpose.

(2) Venue shall be determined pursuant to section 10-1207, R. C. M. 1947.

History: En. 10-1302 by Sec. 3, Ch. 328, L. 1974.

**10-1303. Declaration of policy.** It is the policy of this state to provide for the protection of children whose health and welfare are adversely affected and further threatened by the conduct of those responsible for their care and protection. It is intended that the mandatory reporting of such cases by professional people and other community members to the appropriate authority will cause the protective services of the state to seek to prevent further abuses, protect and enhance the welfare of these children, and preserve family life wherever possible.

History: En. Sec. 1, Ch. 178, L. 1965; amd. Sec. 1, Ch. 292, L. 1973; Sec. 10-901, R. C. M. 1947; redes. 10-1303 by Sec. 14, Ch. 328, L. 1974.

#### Amendments

The 1973 amendment rewrote this section which read: "It is the policy of this

state to provide for the protection of children who have had physical injury or willful neglect inflicted upon them and who, in the absence of appropriate reports concerning their condition and circumstances, may be further threatened by the conduct of those responsible for their care and protection."

**10-1304. Reports.** Any physician who examines, attends or treats a person under the age of majority, or any nurse, teacher, social worker, attorney or law enforcement officer or any other person who has reason to believe that a child has had serious injury or injuries inflicted upon him or her as a result of abuse or neglect, or has been willfully neglected, shall report the matter promptly to the department of social and rehabilitation services, its local affiliate, and the county attorney of the county where the child resides. This report shall contain the names and addresses of the child and his or her parents or other persons responsible for his or her care; to the extent known, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries, and any other information that the maker of the report believes might be helpful in establishing the cause of the injuries or showing the willful neglect and the identity of person or persons responsible therefor; and the facts which led the person reporting to believe that the child has suffered injury or injuries, or willful neglect, within the meaning of this act.

History: En. Sec. 2, Ch. 178, L. 1965; amd. Sec. 2, Ch. 292, L. 1973; Sec. 10-902, R. C. M. 1947; redes. 10-1304 by Sec. 14, Ch. 328, L. 1974.

#### Amendments

The 1973 amendment substituted "phy-

sician" at the beginning of the section for "licensed physician and surgeon, resident or intern"; substituted "any nurse, teacher, social worker, attorney or law enforcement officer or any other person" in the first sentence for "any registered nurse, practical nurse, any visiting nurse,

any schoolteacher, or any social worker acting in his or her official capacity"; inserted "the department of social and rehabilitation services, its local affiliate, and" before "the county attorney" near the end of the first sentence; substituted "where the child resides" at the end of the first sentence for "where such exam-

ination is made or such child is located"; deleted from the end of the first sentence a proviso relating to reports through the head of an institution; deleted from the beginning of the second sentence a clause requiring reduction to writing of reports initially made verbally; and made minor changes in phraseology.

**10-1305. Action on reporting.** If from said report it shall appear that the child suffered such injury or injuries or willful neglect, the social worker shall conduct a thorough investigation into the home of the child involved and into the circumstances surrounding the injury of the child and into all other matters which, in the discretion of the social worker, shall be relevant and material to the investigation. If from the investigation it shall appear that the child suffered such injury or injuries or willful neglect, the department shall provide protective services to protect the child and preserve the family. The department will advise the county attorney of its investigation.

The investigating social worker shall also furnish a written report to the department of social and rehabilitation services who shall have the responsibility of maintaining a central registry on child abuse or willful neglect cases.

**History:** En. Sec. 3, Ch. 178, L. 1965; amd. Sec. 3, Ch. 292, L. 1973; Sec. 10-903, R. C. M. 1947; redes. 10-1305 by Sec. 14, Ch. 328, L. 1974.

#### Amendments

The 1973 amendment rewrote this section to provide for investigation by the social worker and protective services by the department rather than investigation by the county attorney.

### 10-1306, 10-1307. [Transferred from Chapter 9.]

#### Compiler's Notes

These sections were originally numbered 10-904 and 10-905. Section 14, Ch. 328, Laws of 1974 renumbered them to appear

here. Because there has been no change in text, the sections are not reprinted here but may be found in bound Volume 1, part 2, as secs. 10-904 and 10-905.

**10-1308. Confidentiality.** The case records of the department of social and rehabilitation services, its local affiliate, the county welfare department, the county attorney and the court concerning actions taken under this act shall be kept confidential unless the court determines that they should be released.

**History:** En. 10-1308 by Sec. 4, Ch. 328, L. 1974.

### DECISIONS UNDER FORMER LAW

#### Exception to Confidentiality

Confidentiality of privileged communications does not prevent disclosure of information obtained by school nurse, public nurse, and social welfare workers as evi-

dence at custody hearing for dependent and neglected children: Matter of Declaring Jones and Peterson Children, — M —, 539 P 2d 1193.

**10-1309. Emergency protective service.** (1) Any social worker of the department of social and rehabilitation services, the county welfare department, a peace officer, or county attorney who has reason to believe any youth is in immediate or apparent danger of violence or serious injury may



immediately remove the youth and place him in a protective facility. The department may make a request for further assistance from the law enforcement agency or take such legal action as may be appropriate.

(2) A petition shall be filed within 48 hours of emergency placement of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents.

(3) The department of social and rehabilitation services and the county welfare department shall comply with the procedure set forth in 10-1305.

(4) The department of social and rehabilitation services and the county welfare department shall make such necessary arrangements for the youth's well-being as are required prior to the court hearing.

**History:** En. 10-1309 by Sec. 5, Ch. 328, L. 1974; amd. Sec. 19, Ch. 100, L. 1977.

tion into numbered subsections; substituted "procedure" for "judicial procedures" in subsection (3); and made minor changes in phraseology, punctuation and style.

#### **Amendments**

The 1977 amendment divided the sec-

**10-1310. Petitions.** (1) The county attorney shall be responsible for filing all petitions alleging abuse, neglect, or dependency. He may require all state, county, and municipal agencies, including law enforcement agencies, to conduct such investigations and furnish such reports as may be necessary.

(2) Such petitions shall be given preference by the court in setting hearing dates.

(3) A petition alleging abuse, neglect, or dependency is a civil action brought in the name of the state of Montana. The rules of civil procedure shall apply except as herein modified. Proceedings under a petition are not a bar to criminal prosecution.

(4) The parents or parent, guardian, or other person or agency having legal custody of the youth named in the petition, if residing in the state, shall be served personally with a copy of the petition and summons at least 5 days prior to the date set for hearing. If such person or agency resides out of state or is not found within the state, the rules of civil procedure relating to service of process in such cases shall apply.

(5) In the event service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party where in the opinion of the court the interests of justice require.

(6) If a parent of the child is a minor, notice shall be given to the minor parent's parents or guardian, and if there is no guardian the court shall appoint one.

(7) Any person interested in any cause under this act has the right to appear.

(8) Except where the proceeding is instituted or commenced by a representative of the department of social and rehabilitation services, a citation shall be issued and served upon a representative of the department prior to the court hearing.

(9) The petition shall:

- (a) state the nature of the alleged abuse, neglect, or dependency;
- (b) state the full name, age, and address of the youth and the name and address of his parents or guardian or person having legal custody of the youth;
- (c) state the names, addresses, and relationship to the youth of all persons who are necessary parties to the action.

(10) The petition may ask for the following relief:

- (a) temporary investigative authority and protective services;
- (b) temporary legal custody;
- (c) limited legal custody;
- (d) permanent legal custody, including the right to consent to adoption;
- (e) appointment of guardian ad litem;
- (f) any combination of the above or such other relief as may be required for the best interest of the youth.

(11) The petition may be modified for different relief at any time within the discretion of the court.

(12) The court may at any time on its own motion or the motion of any party appoint a guardian ad litem for the youth or counsel for any indigent party.

(13) This section does not apply to a petition for temporary investigative authority and protective services.

**History:** En. 10-1310 by Sec. 6, Ch. 328, L. 1974; amd. Sec. 20, Ch. 100, L. 1977.

#### **Amendments**

The 1977 amendment substituted "or" for "and" near the end of the first sentence of subsection (1); inserted "parents or" after "parent's" in subsection (6); inserted "and the name and address of" in subdivision (9)(b); and made minor changes in phraseology, punctuation and style.

#### **Constitutionality**

Fact that under subsection (12) the appointment of separate counsel for the child in a dependent and neglected child proceeding is discretionary, not mandatory, does not render the provision violative of due process. *Stubben v. Flathead County Department of Public Welfare*, — M —, 556 P 2d 904.

### **DECISIONS UNDER FORMER LAW**

#### **Jurisdiction Based on Service**

District court had jurisdiction over petition by state seeking permanent custody and right to consent to adoption of three children despite the facts that proper citation was not issued or served on the parents, where father of one of the children had consented to the proceeding, father of other two children was deceased, mother who was represented by counsel appeared at the hearing voluntarily and the hearing on the petition in question was preceded by a series of hearings and postponements regarding temporary custody of the children. *Bonser v. County of Cascade*, — M —, 507 P 2d 1064.

#### **Residence**

Where child was taken from Indian

reservation and abandoned outside the reservation, district court for the county where the child was found could take jurisdiction and provide for the child despite the fact that the mother remained on the reservation and committed no acts of neglect outside the reservation. *In re Cantrell*, 159 M 66, 495 P 2d 179.

#### **Temporary Custody**

Where petitioners had requested temporary custody of neglected children, and no petition had been filed by the welfare department for permanent custody, the court was without authority to enter an order of permanent custody. *Flathead County Welfare Department v. Endres*, — M —, 533 P 2d 959.

**10-1311. Petition for temporary investigative authority and protective services.** (1) In cases where it appears that a youth is abused or neglected or is in danger of being abused or neglected, the county attorney may file a petition for temporary investigative authority and protective services.

(2) A petition for temporary investigative authority and protective services shall state the specific authority requested and the facts establishing probable cause that a youth is abused or neglected or is in danger of being abused or neglected.

(3) The petition for temporary investigative authority and protective services shall be supported by an affidavit signed by the county attorney or a department of social and rehabilitation services report stating in detail the facts upon which the request is based.

(4) (a) Upon the filing of a petition for temporary investigative authority and protective services, the court may issue an order granting such relief as may be required for the immediate protection of the youth.

(b) The order shall be served by a peace officer or a representative of the department of social and rehabilitation services on the person or persons named therein.

(c) The order shall require the person served to comply immediately with the terms thereof or, upon failure to so comply, to appear before the court issuing the order on the date specified and show cause why he has not complied with the order. Except as otherwise provided herein, the rules of civil procedure shall apply.

(d) Upon a failure to comply or show cause the court may hold the person in contempt or place temporary legal custody of the youth with the department of social and rehabilitation services until further order.

(5) The court may grant the following kinds of relief:

(a) right of entry by a peace officer or department of social and rehabilitation services worker;

(b) medical and psychological evaluation of youth or parents, guardians, or person having legal custody;

(c) require the youth, parents, guardians, or person having legal custody to receive counseling services;

(d) place the youth in temporary medical facility or facility for protection of the youth;

(e) require the parents, guardian, or other person having custody to furnish such services as the court may designate;

(f) such other temporary disposition as may be required in the best interest of the youth.

**History:** En. 10-1311 by Sec. 7, Ch. 328, L. 1974; amd. Sec. 21, Ch. 100, L. 1977.

**Amendments**

The 1977 amendment substituted ref.

erences to department of social and rehabilitation services for state social and rehabilitation services; and made minor changes in phraseology, punctuation and style.



**10-1312. Hearing.** (1) In a hearing on a petition under section 10-1310, R. C. M. 1947, the court shall determine whether said youth is an abused, neglected or dependent child, and ascertain, as far as possible, the cause thereof.

(2) The court shall hear evidence regarding the residence of the child, whereabouts of the parents, guardian or nearest adult relative, the financial ability of any such parents or parent, to pay the cost of care of the child, whether or how long the child has been maintained in whole or in part by public or private charity, and may take into consideration the report of the county welfare department filed with the clerk of the court, pursuant to section 10-1313, R. C. M. 1947.

(3) In all civil and criminal proceedings relating to abuse, neglect or dependency the doctor-patient privilege and husband-wife privilege shall not apply to the extent any testimony relates to such matters.

History: En. 10-1312 by Sec. 8, Ch. 328,  
L. 1974.

**10-1313. Investigation of parents' financial ability.** Whenever any petition is filed with the clerk of the district court alleging abuse, neglect or dependency, the clerk of such court shall immediately deliver to the county welfare department of the county in which the petition is filed, a copy of the petition with a notation thereon giving the day and time fixed by the court for hearing the petition. Upon receipt of such copy of petition the county welfare department shall make an investigation for the purpose of ascertaining whether the parent or parents, if any, of the child live within the county and the financial ability of such parent or parents, if any, to pay the cost of supporting the child in a foster home, and shall file with the clerk of such court, before the time fixed for the hearing, a written report of such investigation. If, upon hearing, the court finds and determines that the child has parents, or a parent, who is financially able to pay a part or the whole of such cost, and the child is ordered placed in a foster home, the court shall make an order requiring such parents, or parent, to pay such amount as the court may deem proper. A copy of the written report shall be provided to all parties to the proceeding before the time filed for hearing.

If the child is placed in a foster home, the state department of social and rehabilitation services shall pay one-half ( $\frac{1}{2}$ ) of the cost thereof, and the county in which such child has residence shall pay the other one-half ( $\frac{1}{2}$ ) thereof. Any amount collected from a parent or parents, when a child is placed in a foster home, shall be transmitted to the state department of social and rehabilitation services. The department shall then pay to the county one-half ( $\frac{1}{2}$ ) of the amount so collected.

History: En. 10-1313 by Sec. 9, Ch. 328,  
L. 1974.

**10-1314. Judgment.** (1) If a youth is found to be abused, neglected, or dependent, the court may enter its judgment making any of the following dispositions to protect the welfare of the youth:

- (a) permit the youth to remain with his parents or guardian subject to those conditions and limitations the court may prescribe;
- (b) transfer legal custody to any of the following:
  - (i) department of social and rehabilitation services;
  - (ii) a child-placing agency willing and able to assume responsibility for the education, care and maintenance of the youth and which is licensed or otherwise authorized by law to receive and provide care of the youth; or
  - (iii) a relative or other individual who, after study by a social service agency designated by the court, is found by the court to be qualified to receive and care for the youth;
- (c) order any party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment and counseling;
- (d) order such further care and treatment as the court may deem in the best interest of the youth.

(2) Whenever the court vests legal custody in any agency, institution or department it shall transmit with the dispositional judgment copies of any medical report, and such other clinical, predisposition or other reports and information as may be pertinent to the care and treatment of the youth.

(3) Any youth found to be abused, neglected or dependent may be committed to the Montana children's center, and if the center is unable to receive the child, or if, for any other reason, it appears to be in the best interest of the child, the court may make such other disposition of the child as the court deems best for his social and physical welfare. The form of commitment shall be as follows:

### ORDER OF COMMITMENT

State of Montana, County of ..... ss:

In the District Court for the ..... Judicial District.

On the ..... day of ....., 19.... ..... minor of this county, was charged on the petition of ..... of county attorney of ..... county, with being an abused or neglected or dependent child. Upon due proof I find that it is for the best interests of the child that he be taken from the custody of his parents, guardian or other person having custody of him.

The names, addresses and occupations of the parents are:

Name	Address	Occupation
.....	.....	.....
.....	.....	.....

The child's guardian is .....

The child is in the custody of .....

It is ordered that ..... be committed to ..... until discharged as provided by law.

Witness my hand this ..... day of ..... A.D. 19....

.....  
Judge

(4) Transfer of legal custody of a child shall include guardianship of any assets or estate of the child, unless otherwise specified by the court.

(5) Except in cases in which the court permanently terminates all parental rights or rights of the guardian of the youth, the court shall retain jurisdiction over the case and may subsequently modify any disposition ordered pursuant to this section.

**History:** En. 10-1314 by Sec. 10, Ch. 328, L. 1974.

#### DECISIONS UNDER FORMER LAW

##### Child's Best Interests

Once a child has been found dependent and neglected, the primary concern is for the child's best interests and welfare, not that of the mother, and the fact that the mother's consent may have been obtained

by undue influence does not necessarily invalidate a judgment awarding permanent custody to the welfare department with the power to consent to adoption. In re Bad Yellow Hair, — M —, 509 P 2d 9, 12.

**10-1315. Responsibility of providing protective services.** The department of social and rehabilitation services and the county welfare department shall have the primary responsibility to provide the protective services authorized by this act and shall have the authority pursuant to this act to take temporary, limited or permanent custody of a child when ordered to do so by the court, including the right to give consent to adoption.

**History:** En. 10-1315 by Sec. 11, Ch. 328, L. 1974.

#### 10-1316. [Transferred from Chapter 5.]

##### Compiler's Notes

This section was originally numbered 10-520. Section 14, Ch. 328, Laws of 1974 renumbered it to appear here. Because

there has been no change in text, the section is not reprinted here but may be found in bound Volume 1, part 2, as sec. 10-520.

**10-1317. License required.** No person shall maintain or operate a foster or boarding home for any child or children within the meaning of this act without first securing a license in writing from the state department of social and rehabilitation services. No fee shall be charged for such license.

**History:** En. Sec. 2, Ch. 178, L. 1947; amd. Sec. 47, Ch. 121, L. 1974; Sec. 10-521, R. C. M. 1947; redes. 10-1317 by Sec. 14, Ch. 328, L. 1974.

##### Amendments

The 1974 amendment substituted "state department of social and rehabilitation services" for "state department of public welfare."

**10-1318. Issuance of license—authority of issuing agency.** The state department of social and rehabilitation services is hereby authorized to issue licenses to persons conducting boarding or foster homes and to prescribe the conditions upon which such licenses shall be issued, and making such rules and regulations as it may deem advisable for the operation and regulation of foster and boarding homes for minor children consistent with the welfare of such children. Such licensing agency shall have the power and authority to inspect all such licensed foster and boarding homes through its duly authorized representatives and to cancel licenses theretofore issued for the failure to observe such rules and regulations.



The person operating such homes shall give to such representative such information as may be required and afford them every reasonable facility for observing the operation of such homes.

**History:** En. Sec. 3, Ch. 178, L. 1947; amd. Sec. 47, Ch. 121, L. 1974; Sec. 10-522, R. C. M. 1947; redes. 10-1318 by Sec. 14, Ch. 328, L. 1974.

state department of social and rehabilitation services" for "The division of child welfare services of the state department of public welfare" at the beginning of the section.

#### Amendments

The 1974 amendment substituted "The

### 10-1319. [Transferred from Chapter 5.]

#### Compiler's Notes

This section was originally numbered 10-523. Section 14, Ch. 328, Laws of 1974 renumbered it to appear here. Because

there has been no change in text, the section is not reprinted here but may be found in bound Volume 1, part 2, as sec. 10-523.

**10-1320. Payment for support of dependent and neglected children—reimbursement by county.** (1) Whenever agreements are entered into by the department of social and rehabilitation services for placing dependent and neglected children in approved family foster homes or licensed private institutions, the department shall pay by its check or draft each month from any funds appropriated for that purpose the entire amount agreed upon for board, clothing, personal needs, and room of such children.

(2) On or before the 20th of each month the department shall present a claim to the county of residence of such children for one-half the payments so made during the month. The county must make reimbursement to the department within 20 days after such claim is presented.

**History:** En. Sec. 1, Ch. 48, L. 1949; amd. Sec. 1, Ch. 194, L. 1965; amd. Sec. 1, Ch. 264, L. 1971; amd. Sec. 48, Ch. 121, L. 1974; Sec. 10-524, R. C. M. 1947; redes. 10-1320 by Sec. 14, Ch. 328, L. 1974; amd. Sec. 22, Ch. 100, L. 1977.

The 1974 amendment substituted "state department of social and rehabilitation services" for "department of public welfare" in the first paragraph.

The 1977 amendment inserted the subsection designations; and made minor changes in phraseology, punctuation and style.

#### Amendments

The 1971 amendment inserted "clothing, personal needs" near the end of the first paragraph.

**10-1321. Recovery from parents—division between state and county.** In the event any recovery is made from the parent or parents of children for whom board, clothing, personal needs and room has been paid by the state and county any amount so recovered shall be divided equally between the state department and the county of residence of such child or children.

**History:** En. Sec. 2, Ch. 48, L. 1949; amd. Sec. 1, Ch. 264, L. 1971; Sec. 10-525, R. C. M. 1947; redes. 10-1321 by Sec. 14, Ch. 328, L. 1974.

#### Amendments

The 1971 amendment inserted "clothing, personal needs."

**10-1322. Punishment of parents and other adults.** (1) If the evidence indicates violation of the Criminal Code, it shall be the responsibility of the county attorney to file appropriate charges against the alleged offender.

(2) District court shall have original jurisdiction under this section.

**History:** En. 10-1322 by Sec. 12, Ch. 328,  
L. 1974.

**Repealing Clause**

Section 13 of Ch. 328, Laws 1974 read  
"Sections 10-501 through 10-519, R. C. M.  
1947, are repealed."

#### CHAPTER 14—INTERSTATE COMPACT ON PLACEMENT OF CHILDREN

##### Section

- 10-1401. Enactment—provisions.
- 10-1402. Financial responsibility.
- 10-1403. Appropriate public authorities defined.
- 10-1404. Appropriate authority in the receiving state.
- 10-1405. Agreements.
- 10-1406. Requirements for visitation, inspection and supervision.
- 10-1407. Certain laws not applicable.
- 10-1408. Court jurisdiction retained.
- 10-1409. Executive head defined.

**10-1401. Enactment—provisions.** The interstate compact on the placement of children is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

##### Article I. Purpose and Policy

It is the purpose and policy of the party states to co-operate with each other in the interstate placement of children to the end that:

(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.

(d) Appropriate jurisdictional arrangements for the care of children will be promoted.

##### Article II. Definitions

As used in this act:

(a) "Child" means a person who, by reason of minority, is legally subject to parental, guardianship or similar control.

(b) "Sending agency" means a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings, or causes to be sent or brought any child to another party state.

(c) "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private

persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(d) "Placement" means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character, and any hospital or other medical facility.

### Article III. Conditions for Placement

(a) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(1) The name, date and place of birth of the child.

(2) The identity and address or addresses of the parents or legal guardian.

(3) The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring, or place the child.

(4) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph (b) of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

### Article IV. Penalty for Illegal Placement

The sending, bringing or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty,



any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children.

#### Article V. Retention of Jurisdiction

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a) hereof.

#### Article VI. Institutional Care of Delinquent Children

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

(1) Equivalent facilities for the child are not available in the sending agency's jurisdiction; and

(2) Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

#### Article VII. Compact Administrator

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general co-ordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

**Article VIII. Limitations**

This compact shall not apply to:

(a) The sending or bringing of a child into a receiving state by his parent, step-parent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or non-agency guardian in the receiving state.

(b) Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

**Article IX. Enactment and Withdrawal**

This compact shall be open to joinder by any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of Congress, the government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

**Article X. Construction and Severability**

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

**History:** En. 10-1401 by Sec. 1, Ch. 376, acting the Interstate Compact on the Placement of Children; amending the Revised Codes of Montana 1947, Title 10 by L. 1975.

**Title of Act**

An act relating to public welfare; en-

acting the Interstate Compact on the Placement of Children; amending the Revised Codes of Montana 1947, Title 10 by adding a new chapter 14.

**10-1402. Financial responsibility.** Financial responsibility for any child placed pursuant to the provisions of the interstate compact on the placement of children shall be determined in accordance with the provisions of Article V thereof in the first instance. However, in the event of partial or complete default of performance thereunder, the provisions of sections 93-2601-41 to 93-2601-82 (Revised Uniform Reciprocal Enforce-

ment of Support Act) and sections 10-1312 and 10-1313 also may be invoked.

**History:** En. 10-1402 by Sec. 1, Ch. 376,  
L. 1975.

**10-1403. Appropriate public authorities defined.** The "appropriate public authorities" as used in Article III of the interstate compact on the placement of children shall, with reference to this state, mean the state department of social and rehabilitation services and said department shall receive and act with reference to notices required by said Article III.

**History:** En. 10-1403 by Sec. 1, Ch. 376,  
L. 1975.

**10-1404. Appropriate authority in the receiving state.** As used in paragraph (a) of Article V of the interstate compact on the placement of children, the phrase "appropriate authority in the receiving state" with reference to this state shall mean the state department of social and rehabilitation services.

**History:** En. 10-1404 by Sec. 1, Ch. 376,  
L. 1975.

**10-1405. Agreements.** The officers and agencies of this state and its subdivisions having authority to place children are hereby empowered to enter into agreements with appropriate officers or agencies of or in other party states pursuant to paragraph (b) of Article V of the interstate compact on the placement of children. Any such agreement which contains a financial commitment or imposes a financial obligation on this state or subdivision or agency thereof shall not be binding unless it has the approval in writing of the state treasurer in the case of the state and of the chief local fiscal officer in the case of a subdivision of the state.

**History:** En. 10-1405 by Sec. 1, Ch. 376,  
L. 1975.

**10-1406. Requirements for visitation, inspection and supervision.** Any requirements for visitation, inspection or supervision of children, homes, institutions or other agencies in another party state which may apply under sections 10-1317, 10-1318, and 71-710 are considered to be met if performed pursuant to an agreement entered into by appropriate officers or agencies of this state or a subdivision thereof as contemplated by paragraph (b) of Article V of the interstate compact on the placement of children.

**History:** En. 10-1406 by Sec. 1, Ch. 376,  
L. 1975.

**10-1407. Certain laws not applicable.** The provisions of section 71-711 shall not apply to placements made pursuant to the interstate compact on the placement of children.

**History:** En. 10-1407 by Sec. 1, Ch. 376,  
L. 1975.



**10-1408. Court jurisdiction retained.** Any court having jurisdiction to place delinquent children may place such a child in an institution of or in another state pursuant to Article VI of the interstate compact on the placement of children and shall retain jurisdiction as provided in Article V thereof.

**History:** En. 10-1408 by Sec. 1, Ch. 376,  
L. 1975.

**10-1409. Executive head defined.** As used in Article VII of the interstate compact on the placement of children, the term "executive head" means the governor. The governor is hereby authorized to appoint a compact administrator in accordance with the terms of said Article VII.

**History:** En. 10-1409 by Sec. 1, Ch. 376,  
L. 1975.



## TITLE 11—CITIES AND TOWNS

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CHAPTER 2—CLASSIFICATION AND ORGANIZATION  
OF CITIES AND TOWNS

## Section

11-201. Cities and towns classified.

11-203. Organization of cities and towns—petition and census.

**11-201. (4959) Cities and towns classified.** Every city having a population of ten thousand or more is a city of the first class; every city having a population of less than ten thousand and more than five thousand is a city of the second class; every city having a population of less than five thousand and more than one thousand is a city of the third class; and every municipal corporation having a population of three hundred and less than one thousand is a town; provided, that every municipal corporation having a population of more than five thousand and less than seven thousand five hundred may by resolution adopted by the city council pursuant to sections 11-301 to 11-305 be either a second class city or a third class city; and provided, that every municipal corporation having a population of more than one thousand and less than twenty-five hundred, may by resolution adopted by the city or town council, as the case may be, pursuant to sections 11-301 to 11-305, be either a city or town. Nothing in this act shall be construed as affecting the status or classification of any existing city or town.

**History:** En. Sec. 4710, Pol. C. 1895; re-en. Sec. 3206, Rev. C. 1907; re-en. Sec. 4959, R. C. M. 1921; amd. Sec. 1, Ch. 202, L. 1947; amd. Sec. 1, Ch. 126, L. 1969.

**Amendments**

The 1969 amendment inserted the proviso permitting municipal corporations of more than 5,000 and less than 7,500 population to be either a second or third class city.

**11-203. (4961) Organization of cities and towns—petition and census.** Whenever the inhabitants of any part of a county desire to be organized into a city or town, they may apply by petition in writing, signed by not less than two thirds ( $\frac{2}{3}$ ) of the qualified electors, but not more than three hundred (300) such electors who are residents of the state, and residing within the limits of the proposed incorporation, to the board of county commissioners of the county in which the territory is situated, which petition must describe the limits of the proposed city or town, and of the several wards thereof each of which shall contain one hundred fifty (150) qualified electors or more and, which must not exceed one square mile for each five hundred inhabitants resident therein. The petitioners must annex to the petition a map of the proposed territory to be incorporated, and state the name of the city or town. The petition and map must be filed in the office of the county clerk. Upon filing the petition, the board of county commissioners, at its next regular or special meeting, must appoint some suitable person to take a house-to-house census of the residents of the territory to be incorporated. After taking the census, the person appointed to take the same must return the list to the board of county commissioners, and the same must be filed by it in the county clerk's office. No municipal corporation may be formed unless the number of inhabitants is three hundred or upwards; and unless the boundary of the proposed territory to be incorporated is more than three (3) miles from the boundary, measured from the nearest point between the two (2), of any presently incorporated

city or town or there is presented to the board, appropriate evidence that any presently incorporated city or town within three (3) miles which legally could annex, but has refused to annex the proposed territory.

**History:** En. Sec. 315, 5th Div. Comp. Stat. 1887; re-en. Sec. 4720, Pol. C. 1895; re-en. Sec. 3208, Rev. C. 1907; amd. Sec. 1, Ch. 56, L. 1909; re-en. Sec. 4961, R. C. M. 1921; amd. Sec. 1, Ch. 86, L. 1973; amd. Sec. 1, Ch. 515, L. 1973.

#### Compiler's Notes

This section was amended twice in 1973, once by Ch. 86 and once by Ch. 515. Neither amendatory enactment mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

#### Amendments

Chapter 86, Laws of 1973, added the clause following the semicolon in the last sentence of this section.

Chapter 515, Laws of 1973, substituted "two-thirds ( $\frac{2}{3}$ ) of the qualified electors,

but not more than three hundred (300) such electors who are" for "fifty qualified electors" in the first sentence; inserted "each of which shall contain one hundred fifty (150) qualified electors or more and" near the end of the first sentence; inserted "house-to-house" in the fourth sentence; and made a minor change in phraseology.

#### Effective Date

Section 2 of Ch. 515, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved April 4, 1973.

#### Effect of Amendments

Peremptory writ of mandate ordering county commissioners to hold election for incorporation of city or town was properly dismissed where 1973 amendments to this section rendered the petition moot. *Snyder v. McKinley*, — M —, 521 P 2d 919.

### CHAPTER 3—CHANGES IN CLASSIFICATION OF CITIES AND TOWNS

#### Section

- 11-308. Automatic disincorporation.
- 11-309. Disincorporation by election—notice.
- 11-310. Form of ballot.
- 11-311. Conduct of election.
- 11-312. Insufficient vote to disincorporate—waiting period for new election.
- 11-313. Order of disincorporation on vote by electors.
- 11-314. Order for automatic disincorporation.
- 11-315. Certification of financial condition.
- 11-316. Release of public property to county commissioners—police court records.
- 11-317. Payment of debts and collection of receivables of city or town.
- 11-318. Tax levy in the event of insolvency.
- 11-319. Surplus assets deposited to special fund.
- 11-320. Collection of amounts due to corporation.
- 11-321. Payment of costs and expenses from special county fund.

#### 11-306, 11-307. (4974, 4975) Repealed.

##### Repeal

Sections 11-306, 11-307 (Secs. 4955, 4956, Pol. C. 1895; Sec. 1, Ch. 3, L. 1931), relating to the disincorporation of cities or

towns, were repealed by Sec. 16, Ch. 99, Laws 1973. For new law see secs. 11-308 to 11-321.

**11-308. Automatic disincorporation.** If the governing body of any city or town incorporated under the laws of the state of Montana ceases to exist or fails to function for a period of two (2) years, the city or town shall be disincorporated in the manner set forth in this act.

**History:** En. Sec. 1, Ch. 99, L. 1973.

##### Title of Act

An act providing for the automatic disincorporation of Montana cities or towns and procedures for disincorporation by

petition in cities or towns; providing for elections to determine the question; establishing procedures for managing existing debt; defining the effect of disincorporation; and repealing sections 11-306 and 11-307, R. C. M. 1947.

**11-309. Disincorporation by election—notice.** (1) Any city or town may be disincorporated in the manner hereafter provided.

(2) If the qualified electors of a city or town equal in number to twenty per cent (20%) of the number of voters voting at the last regular municipal election petition the board of county commissioners of the county where the city or town is situated to disincorporate the city or town, the board of county commissioners shall order within sixty (60) days that a special election be held within the city or town on the question of disincorporating the city or town. The day for holding the election shall not be less than thirty (30) days nor more than sixty (60) days after the board of county commissioners orders the election.

(3) Notice of the election shall be published once each week for four (4) consecutive weeks and shall state that the question of disincorporation of the city or town will be submitted to the qualified electors of the city or town on the designated day.

**History:** En. Sec. 2, Ch. 99, L. 1973.

**11-310. Form of ballot.** The form of the ballot is:

- ☐ "For the disincorporation of \_\_\_\_\_ (insert name of city or town)
- ☐ "Against the disincorporation of \_\_\_\_\_ (insert name of city or town)."

**History:** En. Sec. 3, Ch. 99, L. 1973.

**11-311. Conduct of election.** The election is conducted in the same manner as a regular city or town election except that the election officials are appointed by the board of county commissioners. The election returns are made to the board of county commissioners and canvassed in the same manner as are general election returns.

**History:** En. Sec. 4, Ch. 99, L. 1973.

**11-312. Insufficient vote to disincorporate—waiting period for new election.** If it is found by the canvass of the votes that less than sixty per cent (60%) of the votes cast were in favor of disincorporation, the county commissioners shall declare the petition for disincorporation denied, in which case no other election may be held on the question of disincorporating said city or town until after the expiration of two (2) years from the date of the election.

**History:** En. Sec. 5, Ch. 99, L. 1973.

**11-313. Order of disincorporation on vote by electors.** In case the canvass reveals that sixty per cent (60%) or more of all the votes cast were in favor of disincorporation, the county commissioners shall, under their hands make and file in their office, and cause to be entered upon their proceedings, an order that the petition for disincorporation be granted, and declaring that the city or town is disincorporated. The order takes effect within sixty (60) days following the date of the order. A certified copy of the order shall be sent to the Montana secretary of state and the head of the state department of community affairs.



**History:** En. Sec. 6, Ch. 99, L. 1973; amd. Sec. 9, Ch. 213, L. 1975.

partment of community affairs" for "department of intergovernmental relations" at the end of the section.

**Amendments**

The 1975 amendment substituted "de-

**11-314. Order for automatic disincorporation.** In cases where a city or town has been disincorporated by virtue of the provisions of section 1 [11-308] of this act, the county commissioners shall file in their office an order that the disincorporation be granted. This order takes effect within sixty (60) days following the date of the order. A certified copy of the order shall be sent to the state officials named in section 6 [11-313] above.

**History:** En. Sec. 7, Ch. 99, L. 1973.

**11-315. Certification of financial condition.** Upon receiving a certified copy of the order of disincorporation, the director of the department of community affairs shall certify a current statement of the financial condition of the disincorporating city or town to the board of county commissioners. The statement shall include, but not be limited to, a determination of all assets of the city or town, including any current or delinquent utility accounts and/or taxes receivable and a statement of all city or town indebtedness, including any revenue or general obligation bonds, special improvement district obligations outstanding, contracts payable, all other obligations of the city, and a schedule for the repayment of indebtedness. Under the supervision of the director of the department of community affairs or his agent, the city or town treasurer shall draw a treasurer's check for the amount of unencumbered cash in the city or town treasury, the check shall be made payable to and delivered to the county treasurer of the county in which the disincorporating city or town is situated. The county treasurer shall immediately place said money in a special fund, to be drawn upon as provided in this act.

**History:** En. Sec. 8, Ch. 99, L. 1973; amd. Sec. 10, Ch. 213, L. 1975.

partment of community affairs" for "department of intergovernmental relations" throughout this section.

**Amendments**

The 1975 amendment substituted "de-

**11-316. Release of public property to county commissioners—police court records.** Upon the disincorporation of a city or town, every public officer of the city shall immediately turn over, to the board of county commissioners of the county in which the city or town is situated, all public property of every nature and description in their possession. Provided, however, that all court records of the police court, if any, shall be transferred to the nearest justice of the peace. The justice of the peace has the authority to execute and complete all unfinished business. All reports and remittances of fines and forfeitures are made in the same manner as that prescribed for justices of the peace.

**History:** En. Sec. 9, Ch. 99, L. 1973.

**11-317. Payment of debts and collection of receivables of city or town.** The disincorporation of a city or town does not invalidate or affect any right, penalty or forfeiture accruing to the city or town, nor invalidate or

affect any contract entered into or imposed upon the corporation, but all the contracted indebtedness and obligations remain unimpaired by reason of the disincorporation of the city or town. The board of county commissioners of the county succeeding the disincorporated city or town shall provide for the payment and discharge in good faith of all the indebtedness and obligations according to the tenor of the contract or indenture agreement by which they were contracted or the indebtedness incurred, and for the collection of any indebtedness due the city or town. All instruments for the repayment of indebtedness are drawn, by order of the board of county commissioners, on the fund provided in section 8 [11-315] of this act.

History: En. Sec. 10, Ch. 99, L. 1973.

**11-318. Tax levy in the event of insolvency.** If, at any time after the disincorporation of a city or town, it is found that there is not sufficient money in the treasury to the credit of the special fund of section 8 [11-315] with which to pay any indebtedness of the corporation, the board of county commissioners has the power, and it is its duty to levy and collect from the territory formerly included within the city or town, a tax or taxes sufficient in amount to pay the indebtedness of the corporation as the same shall become due. The tax or taxes, assessments and collections shall be made in the same manner and at the same time that other taxes of the county are levied and collected and are an additional tax upon the property included within said territory, or portions thereof, for the payment of said debts. All moneys paid into the county treasury under the provisions of this act shall be placed to the credit of the special fund.

History: En. Sec. 11, Ch. 99, L. 1973.

**11-319. Surplus assets deposited to special fund.** If, after payment of the debts of the corporation, and the liquidation, where possible, of tangible assets, any surplus shall remain in the hands of the county treasurer to the credit of the special fund. Money remaining shall be transferred to the county general fund. Nothing in this section is intended to conflict with the provisions of section 10 [11-317].

History: En. Sec. 12, Ch. 99, L. 1973.

**11-320. Collection of amounts due to corporation.** The board of county commissioners shall make provisions for the collection of the amounts due to a corporation and for the closing up of its affairs, and any act or acts, necessary for that purpose and not otherwise provided shall, upon order of the board of county commissioners, be performed by the officer or officers performing similar duties for the county, as if it had been performed by the proper officer of the city or town, before disincorporation. The county shall succeed to and possess all rights of the corporation to indebtedness and has power to sue for or otherwise collect any debts in the name of the county.

History: En. Sec. 13, Ch. 99, L. 1973.

**11-321. Payment of costs and expenses from special county fund.** All costs and expenses of ascertaining information and all other costs and ex-

penses incurred by the board of county commissioners in the execution of the powers and duties of managing the affairs of the disincorporated city or town, provided for in sections 1 through 13 [11-308 through 11-320], shall be paid out of the special fund in the county treasury.

**History:** En. Sec. 14, Ch. 99, L. 1973.

**Separability Clause**

Section 15 of Ch. 99, Laws 1973 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its

applications, the part remains in effect in all valid applications that are severable from the invalid applications."

**Repealing Clause**

Section 16 of Ch. 99, Laws 1973 read "Sections 11-306 and 11-307, R. C. M. 1947, are repealed."

CHAPTER 4—ADDITIONS OF PLATTED TRACTS  
TO CITIES AND TOWNS

Section

11-403. Extension of boundaries to include contiguous platted tracts or other parcels of land.

**11-403. (4978) Extension of boundaries to include contiguous platted tracts or other parcels of land.** (1) Cities or towns of the first class. Any tracts or parcels of land, which have been or may hereafter be platted into lots or blocks, streets, and alleys, or platted for parks, and the map or plat thereof filed in the office of the county clerk and recorder of the county in which the same are situated, or any unplatted land that has been surveyed and for which a certificate of survey has been filed, as provided in these codes, and which platted or unplatted land shall be contiguous to any incorporated city of the first class, may be embraced within the corporate limits thereof, and the boundaries of such city of the first class extended so as to include the same in the following manner: When, in the judgment of any city council of a city of the first class, expressed by a resolution duly and regularly passed and adopted, it will be to the best interest of such city and the inhabitants of any contiguous platted tracts or parcels of land, or unplatted land for which a certificate of survey has been filed, that the boundaries of such city shall be extended, so as to include the same within the corporate limits thereof, the city clerk of such city shall immediately notify in writing addressed to the address to which tax notices are sent all owners of property in the territory to be embraced and shall cause to be published in the newspaper published nearest such platted tracts or parcels of land, or unplatted land for which a certificate of survey has been filed, at least once a week for two successive weeks, a notice which shall be to the effect that such resolution has been duly and regularly passed, and that for a period of twenty (20) days after the first publication of such notice, such city clerk will receive expressions of approval or disapproval, in writing, of the proposed extensions of the boundaries of such city of the first class, from freeholders of the territory proposed to be embraced therein. The clerk shall, at the next regular meeting of the city council of such city of the first class after the expiration of said twenty (20) days, lay before the same all communications in writing by him so received for its consideration, and if, after considering the same, such council shall duly and regularly pass and adopt a resolu-



tion to that effect, the boundaries of such city of the first class shall be extended so as to embrace and include such platted tracts or parcels of land or unplatted land for which a certificate of survey has been filed, the time when the same shall go into effect to be fixed by such resolution; provided however, that land used for industrial or manufacturing purposes shall not be included in such city under the provisions of this section without the consent in writing of the owners of such land, and further provided, that such resolution shall not be adopted by such council if disapproved, in writing, by a majority of the resident freeholders of the territory proposed to be embraced and no further resolutions relating to the annexation of said territory or any portion thereof may be considered or acted upon by the council on its own initiative and without petition, for a period of one year from the date of disapproval.

Provided also, that cities of the first class may include as part of such city any platted or unplatted tract or parcel of land that is wholly surrounded by such city upon passing a resolution advertising and upon passing a further resolution or following such advertising, all in the manner aforesaid, and such land shall be annexed, if so resolved, whether or not a majority of the resident freeholders of the land to be annexed object; provided, however, that land used for agricultural, mining, smelting, refining, transportation, or any industrial or manufacturing purpose or for the purpose of maintaining or operating a golf or country club, an athletic field or aircraft landing field, a cemetery or a place for public or private outdoor entertainment or any purpose incident thereto, shall not be annexed under this provision.

(2) and (3) \* \* \* [Same as parent volume.]

**History:** En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R. C. M. 1921; amd. Sec. 1, Ch. 52, L. 1925; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977.

#### Amendments

The 1977 amendment substituted "immediately notify in writing addressed to the address to which tax notices are sent all owners of property in the territory to be embraced and shall" in the middle of the second sentence of subsection (1) for "forthwith"; deleted "resident" before "freeholders" in three places in subsection (1); and made minor changes in phraseology.

#### Constitutionality

This section does not violate article III, section 14 of state constitution nor Amendment 5 of United States constitution which provides that private property may not be taken for public use without payment of just compensation, and does not violate article III, section 27 of state constitution or Amendments 5 and 14 of United States constitution which provide that private property cannot be taken with-

out due process of law. *Brodie v. City of Missoula*, 155 M 185, 468 P 2d 778.

Classifications established by legislature in limiting protests to annexation to resident freeholders in first class cities, while permitting protest by freeholders without regard to residence in smaller cities is not only a rational distinction but also promotes a compelling governmental interest and is therefore constitutional. *Burritt v. City of Butte*, — M —, 508 P 2d 563.

#### Certificate of Survey

Contention that 30-acre tract was improperly annexed to city due to failure of city council to survey unplatted land and file certificate of survey prior to annexation was without merit since entire tract was surrounded by city and therefore, under this section, no certificate of survey was necessary. *Brodie v. City of Missoula*, 155 M 185, 468 P 2d 778.

#### Discretion of City Council

Determination of question of whether annexation of tract of realty into city is in best interest of city and inhabitants of such area to be annexed is expressly granted to city council by this section, and exercise of such discretion is subject to judicial review only where council

has proceeded contrary to statute or where they have acted so arbitrarily or capriciously that it may be said they exercised no discretion at all. *Brodie v. City of Missoula*, 155 M 185, 468 P 2d 778.

#### **"Freeholder" Defined**

The term "freeholder" as used in subsection (2) means the purchaser and not the seller under a contract for deed. *State ex rel. Stephens v. City of Hamilton*, — M —, 504 P 2d 283.

#### **Incidental Agricultural Use of Land Annexed**

Contention that 30-acre tract of land was improperly annexed to city since such land was being used for agricultural purposes and therefore exempt from annexation under this section was without merit since evidence indicated that land was primarily held as developmental parcel for housing development and agricultural use was only incidental thereto. *Brodie v. City of Missoula*, 155 M 185, 468 P 2d 778.

#### **"Industrial Purpose" Defined**

"Industrial purpose" is limited to any factory, business or concern which is engaged primarily in the manufacture or assembly of goods or processing of raw materials unserviceable in their natural state which are extracted, processed, or

made fit for use or are substantially altered or treated so as to create commercial products or materials. *Burritt v. City of Butte*, — M —, 508 P 2d 563.

#### **Resident Freeholder**

Neither a corporation nor a partnership is a "resident freeholder" within the meaning of subsection (1) since it is clear that this section requires actual residence on the property sought to be annexed in order to qualify for protest and excludes those entities which possess no actual residence as distinguished from a legal residence. *Burritt v. City of Butte*, — M —, 508 P 2d 563.

#### **Wholly Surrounded Property**

Contention on appeal that city had improperly annexed certain platted lots due to fact that one side of lots was contiguous with outdoor theater and thus such lots were not "wholly surrounded" by city, as required by this section, was without merit since "wholly surrounded," as used in this section, does not mean city property must also be wholly contiguous to such property, rather it means that tract is so located that it is impossible to reach it without crossing city property. *Calvert v. City of Great Falls*, 154 M 213, 462 P 2d 182.

### **CHAPTER 5—ALTERATION OF BOUNDARIES, EXCLUSION AND INCLUSION OF TERRITORY**

#### **Section**

Section	Title.
11-514.	Purpose.
11-515.	Definitions.
11-516.	Initiation of extension of corporate limits.
11-517.	Plans to provide services.
11-518.	Standards to be met before annexation can occur.
11-519.	Resolution of intention to annex—public hearing notice—action by governing body after hearing.
11-520.	Annexation order.
11-521.	Right to court review when area annexed.
11-522.	Right to court review when area not annexed.
11-523.	Certain expenditures authorized.
11-524.	Severability and construction.
11-525.	Preservation of existing garbage or solid waste service in the event of annexation.

**11-514. Title.** The bill shall be entitled "The Planned Community Development Act of 1973."

**History:** En. 11-514 by Sec. 1, Ch. 364, L. 1974.

#### **Title of Act**

An act establishing prerequisites and procedures for municipalities to annex

contiguous areas and authorizing freeholders to petition for annexation; requiring municipalities to plan the extension of governmental services to such areas; and providing for judicial review of annexation proceedings.

**11-515. Purpose.** It is declared as a matter of state policy that current annexation laws and planning methods incorporated in the Montana

system are in many cases discriminatory and are causing in many of the Montana cities indiscriminate growth patterns and forcing in many cases citizens of municipalities to be annexed without provision for adequate **city services** extended and provided for them. Likewise, in many cities city government is annexing and adding to cities not to the benefit of those being annexed, but to the benefit of the city, merely to derive a greater tax base. Likewise, in many cities there are those lying on the perimeter of the city not within the corporate boundaries of a city that are deriving many benefits from the city without paying their just and equal share for these services. Therefore, it is the purpose of this act to develop a just and equitable system of adding to and increasing cities boundaries for the state of Montana, which will develop the following firm policies:

(1) Sound urban development is essential to the continued economic development of this state and any annexation prepared must be well planned in advance.

(2) Municipalities are created to provide the governmental services essential for sound urban development and for the protection of health, safety and welfare in areas being intensively used for residential, commercial, industrial, institutional and governmental purposes or in areas undergoing such development and future annexations must consider these principles.

(3) Municipal boundaries should be extended, in accordance with legislative standards applicable throughout the state, to include such areas and to provide the high quality of governmental services needed for the public health, safety and welfare.

(4) Areas annexed to municipalities in accordance with such uniform legislative standards should receive the services provided by the annexing municipality as soon as possible following annexation.

**History:** En. 11-515 by Sec. 2, Ch. 364, L. 1974.

**"Adding to and Increasing Cities Boundaries"**

The phrase "adding to and increasing cities boundaries" was not intended to

exclude annexation of surrounded areas, but rather indicated the intention to include under the act any and all forms of annexation. Missoula Rural Fire District v. City of Missoula, — M —, 540 P 2d 958.

**11-516. Definitions.** The following terms where used in this act have the following meanings, except where the context clearly indicates a different meaning:

(1) "Contiguous" means any area which, at the time annexation procedures are initiated, either abuts directly on the municipal boundary or is separated from the municipal boundary by a street or street right of way, a creek or river, the right of way of a railroad or other public service corporation, lands owned by the city or some other political subdivision, or lands owned by the state.

(2) "Municipality" means any city or town under Montana law.

(3) "Resident freeholder" means a person who maintains his residence on real property in which he holds an estate of life or inheritance or of which he is the purchaser of such an estate under a contract for deed, some



memorandum of which has been filed in the office of the county clerk and recorder.

History: En. 11-516 by Sec. 3, Ch. 364,  
L. 1974.

**11-517. Initiation of extension of corporate limits.** The governing body of any municipality may extend the corporate limits of such municipality under the procedure set forth in this act upon the initiation of the procedure by the board itself; or, whenever the resident freeholders situated outside the corporate boundaries of any municipality, but contiguous thereto, desire to have real estate annexed to the municipality, they may file with the governing body of the municipality a petition bearing the signatures of fifty-one per cent (51%) of the resident freeholders in the territory sought to be annexed, requesting a resolution stating the intent of the municipality to consider annexation. Upon passage of the resolution, the governing body shall follow the procedure in section 7 [11-520] of this act. If the municipal governing body fails to act within sixty (60) days the petitioners may appeal to the district court under the procedure set down in section 9 [11-522] of this act.

History: En. 11-517 by Sec. 4, Ch. 364,  
L. 1974.

**11-518. Plans to provide services.** A municipality exercising authority under this act shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in section 7 [11-520] of this act, prepare a report setting forth its plans to provide services to such area. This report shall include:

(1) A map or maps of the municipality and adjacent territory to show the following information:

- (a) the present and proposed boundaries of the municipality;
- (b) the present streets, major truck water mains, sewer interceptors and outfalls and other utility lines, and the proposed extension of such streets and utility lines as required in subsection (3) of this section; and
- (c) the general land-use pattern in the areas to be annexed.

(2) A statement showing that the area to be annexed meets the requirements of section 6 [11-519] of this act.

(3) A statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation. Specifically, such plans shall:

(a) provide a long-range plan for extension of services and the acquisition of properties outside the corporate limits. This plan must show anticipated development a minimum of five (5) years into the future showing on a yearly basis how the municipality plans to extend services, develop and add sections to the city;

(b) provide for extending police protection, fire protection, garbage collection, and streets and street maintenance services to the area to be annexed on substantially the same basis and in the same manner as such

services are provided within the rest of the municipality prior to annexation;

(c) provide for future extension of streets and of major trunk water mains, sewer outfall lines and other utility services into the area to be annexed, so that when such streets and utility lines become necessary and are constructed, property owners in the area to be annexed will be able to secure such services, according to the policies in effect in such municipality for extending such services to individual lots or subdivisions;

(d) if extension of streets and water, sewer or other utility lines into the area to be annexed is necessary, set forth a proposed timetable for construction of such streets and utility lines; and

(e) a method must be set forth by which the municipality plans to finance extension of services into the area to be annexed. Included within this plan must be a methodology whereby the area to be annexed may vote upon any proposed capital improvements. Should a negative vote be cast by over fifty per cent (50%) of those resident freeholders in the section or sections to be annexed in such election, the area shall not be annexed. If the area is serviced currently by adequate water and sewage services, streets, curb and gutters, and no capital improvements are needed to provide adequate services stipulated by this section, the municipality must provide the area to be annexed with a plan of how they plan to finance other services to be included within the district—mainly police protection, fire protection, garbage collection, street and street maintenance services, as well as continued utility service. In this annexation plan it must be clearly stated that the entire municipality tends to share the tax burden for these services. And if so, the area may be annexed without a bond issue under the provisions of this act.

History: En. 11-518 by Sec. 5, Ch. 364,  
L. 1974.

**11-519. Standards to be met before annexation can occur.** (1) A municipal governing body may extend the municipal corporate limits to include any area which meets the general standards of subsection (2) of this section.

(2) The total area to be annexed must meet the following standards:

(a) it must be contiguous to the municipality's boundaries at the time the annexation proceeding is begun;

(b) no part of the area may be included within the boundary of another incorporated municipality;

(c) it must be included within and the proposed annexation must conform to a comprehensive plan as prescribed in Title 11, chapter 38, R.C.M. 1947; and

(d) no part of the area may be included within the boundary, as existing at the inception of such attempted annexation, of any fire district organized under any of the provisions of chapter 20, Title 11, if the fire district was originally organized at least 10 years prior to the inception of such attempted annexation. However, a single-ownership piece of land may be transferred from a fire district to a municipality by annexation as provided in 11-2008(5).

(3) In fixing new municipal boundaries, a municipal governing body shall, wherever practical, use natural topographic features such as ridge-lines and streams and creeks as boundaries, and if a street is used as a boundary, include within the municipality land on both sides of the street; and such outside boundary may not extend more than 200 feet beyond the right-of-way of the street.

**History:** En. 11-519 by Sec. 6, Ch. 364, L. 1974; amd. Sec. 1, Ch. 81, L. 1977.

#### **Rural Fire District Land**

Any annexation procedure involving rural fire district land undertaken pursuant to any other Montana annexation law would be inconsistent with the prohibitions of this act. Missoula Rural Fire Dist. v. City of Missoula, — M —, 540 P 2d 958.

#### **Amendments**

The 1977 amendment added the second sentence of subdivision (2)(d); and made minor changes in phraseology, punctuation and style.

**11-520. Resolution of intention to annex—public hearing notice—action by governing body after hearing.** (1) The governing body of any municipality desiring to annex territory under the provisions of this act shall first pass a resolution stating the intent of the municipality to consider annexation. Such resolution shall describe the boundaries of the area under consideration and fix a date for a public hearing on the question of annexation, the date for such public hearing to be not less than thirty (30) days and not more than sixty (60) days following passage of the resolution.

(2) The notice of public hearing shall:

- (a) fix the date, hour and place of the public hearing;
- (b) describe clearly the boundaries of the area under consideration;
- (c) state that the report required in section 5 [11-518] of this act will be available in the office of the municipal official designated by the governing body at least fourteen (14) days prior to the date of the public hearing.

Such notice will be given by publication in a newspaper having general circulation in the municipality once a week for at least four (4) successive weeks prior to the date of the hearing. The date of the last publication shall not be more than seven (7) days preceding the date of the public hearing. If there be no such newspaper, the municipality shall post the notice in at least five (5) public places within the municipality and at least five (5) public places in the area to be annexed for thirty (30) days prior to the date of public hearing.

(3) At least fourteen (14) days before the date of the public hearing, the governing body shall approve the report provided for in section 5 [11-518] of this act, and shall make it available to the public at the office of the municipal official designated by the governing body. In addition, the municipality may prepare a summary of the full report for public distribution.

(4) At the public hearing, a representative of the municipality as designated by the governing body shall first make an explanation of the report required in section 5 [11-518] of this act. Following such explanation, all persons resident or owning property in the territory described in the notice of public hearing and all residents of the municipality shall be given an opportunity to be heard.



(5) The municipal governing body shall take into consideration facts presented at the public hearing and shall have authority to amend the report required by section 5 [11-518] of this act and to make changes in the plans for serving the area proposed to be annexed so long as such changes meet the requirements of section 5 [11-518]. At any regular or special meeting held no sooner than seven (7) days following the public hearing and no later than sixty (60) days following such public hearing, the governing body shall have authority to adopt an ordinance extending the corporate limits of the municipality to include all, or such part, of the area described in the notice of public hearing, which meets the requirements of section 6 [11-519] of this act, and which the governing body has concluded should be annexed. The ordinance shall:

(a) contain specific findings showing that the area to be annexed meets the requirements of section 6 [11-519] of this act. The external boundaries of the area to be annexed shall be described by metes and bounds;

(b) contain a statement of the intent of the municipality to provide services to the area being annexed as set forth in the report required by section 5 [11-518] of this act; and

(c) fix the effective date of annexation. The effective date of annexation may be fixed for any date within twelve (12) months from the date of passage of the ordinance.

(6) From and after the effective date of the annexation ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in such municipality and shall be entitled to the same privileges and benefits as other parts of such municipality. The newly annexed territory shall be subject to municipal taxes levied for the fiscal year following the effective date of annexation. Annexed property which is part of a sanitary district or other special service district which has installed water, sewer or other utilities or improvements, paid for by the residents of said district, shall not be subject to that part of the municipal taxes levied for debt service for the first five (5) years after the effective date of annexation.

(7) If a municipality is considering the annexation of two (2) or more areas which are all adjacent to the municipal boundary but are not adjacent to one another, it may undertake simultaneous proceeding under authority of this act for the annexation of such areas.

(8) For a period of twenty (20) days after the public hearing provided for in section 7 [11-520] of this act the governing body of the municipality shall receive expressions of approval or disapproval in writing, of the proposed annexation from resident freeholders of the territory proposed to be annexed. If a majority of the said resident freeholders, in writing, disapprove the proposed annexation, no further proceedings under this act shall be had, relating to the territory proposed to be annexed or any part thereof, for a period of one (1) year from the date of such disapproval.

History: En. 11-520 by Sec. 7, Ch. 364,  
L. 1974.

**11-521. Annexation order.** The clerk or other officer performing the duties of the clerk of the governing body of a municipality shall promptly make and certify under the seal of the municipal corporation a copy of the record so entered upon the minutes, which document shall be filed with the clerk of the county in which the municipality to which the territory or territories are sought to be annexed, is situated. From and after the date of filing the document in the office of the county clerk or the effective date of the ordinance, whichever is later, the annexation of the territory or territories shall be complete and henceforth such annexed territory or territories shall be a part of the municipal corporation, and the city or town to which the annexation is made has the power to pass all necessary ordinances pertaining thereto.

History: En. 11-521 by Sec. 8, Ch. 364,  
L. 1974.

**11-522. Right to court review when area annexed.** (1) Within thirty (30) days following the passage of an annexation ordinance under authority of this act, either a majority of the resident freeholders in the territory or the owners of more than seventy-five per cent (75%) in assessed valuation of the real estate in the territory who shall believe that he or they will suffer material injury, by reason of the failure of the municipal governing body to comply with the procedure set forth in this act or to meet the requirements set forth in section 6 [11-519] of this act as they apply to his or their property, may file a petition in the district court of the district in which the municipality is located, seeking review of the action of the governing board and serve a copy of the petition on the municipality in the manner of service of civil process.

(2) If two (2) or more petitions for review are submitted to the court, the court may consolidate all such petitions for review at a single hearing.

(3) The review shall be conducted by the court without a jury. The court may hear oral arguments and receive written briefs, and may take evidence intended to show either:

- (a) that the statutory procedure was not followed;
- (b) that the provisions of section 5 [11-518] or section 6 [11-519] were not met; or
- (c) the court may affirm the action of the governing body without change, or it may:

(i) remand the ordinance to the municipal governing body for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any of the petitioners;

(ii) remand the ordinance to the municipal governing body for amendment of the boundaries to conform to the provisions of section 6 [11-519]; but the court cannot remand the ordinance to the municipal governing body with directions to add an area to the municipality which was not included in the notice of public hearing and not provided for in plans for service; or

(iii) remand the report to the municipal governing body for amendment of the plans for providing services to the end that the provisions of section 5 [11-518] of this act are satisfied.

If any municipality fails to take action in accordance with the court's instructions upon remand within three (3) months from receipt of such instructions, the court may in its discretion extend the time for compliance.

(4) Any party to the review proceedings, including the municipality, may appeal to the Montana supreme court from the final judgment of the district court under rules of procedure applicable in other civil cases. The appealing party may apply to the lower court for a stay in its final determination, or a stay of the annexation ordinance, whichever shall be appropriate, pending the outcome of the appeal to the higher court; provided, that the lower court may, with the agreement of the municipality, permit annexation to be effective with respect to any part of the area concerning which no appeal is being made.

If part or all of the area annexed under the terms of an annexation ordinance is the subject of an appeal to the lower or higher court on the effective date of the ordinance, then the ordinance shall be deemed amended to make the effective date with respect to such area the date of the final judgment of the lower or higher court, whichever is appropriate, or the date the municipal governing board completes action to make the ordinance conform to the court's instructions in the event of remand.

(5) All decisions and findings of the governing body of the municipality shall be presumed to be reasonable and lawful, until and unless they are modified or set aside by the governing body or upon review.

(6) No decisions of the governing body shall be subject to collateral attack and may be reviewed or modified only in the manner provided herein.

History: En. 11-522 by Sec. 9, Ch. 364,  
L. 1974.

**11-523. Right to court review when area not annexed.** After the resident freeholders have properly petitioned the governing body of the municipality and the body has failed to pass a resolution of intent to annex within sixty (60) days, the petitioners may file a complaint and a duplicate copy of the petition in the district court of the proper jurisdiction stating the reason why the proposed annexation should take place. The municipality shall be designated party defendant in the cause and shall be required to appear and answer as in other cases. The court, without a jury, shall hear and determine the questions presented in the petition. If the evidence establishes that:

(1) essential municipal services and facilities are not available to the inhabitants of such territory;

(2) the municipality is physically and financially able to provide municipal services to the area sought to be annexed; and

(3) at least one-eighth (1/8) of the aggregate external boundaries of the territory sought to be annexed is contiguous to the boundaries of the municipality; the court shall order the proposed annexation to take place, notwithstanding the provisions of any other law of this state.

If, however, the evidence does not establish all three (3) of the foregoing factors, the court shall deny the petition to annex and dismiss the proceeding.

History: En. 11-523 by Sec. 10, Ch. 364,  
L. 1974.



**11-524. Certain expenditures authorized.** Municipalities initiating annexations under the provisions of this act are authorized to make expenditures for surveys required to describe the property under consideration, or for any other purpose necessary to plan for the study or annexation of unincorporated territory adjacent to the municipality. In addition, following final passage of the annexation ordinance, the annexing municipality shall have authority to proceed with expenditures for construction of streets, utility lines and other capital facilities in the annexed area.

**History:** En. 11-524 by Sec. 11, Ch. 364, L. 1974.

**11-525. Severability and construction.** It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

In so far as the provisions of this act are inconsistent with the provisions of any other law, the provisions of this act shall be controlling. The method of annexation authorized in this act shall be construed as supplemental to and independent from other methods of annexation authorized by state law.

**History:** En. 11-525 by Sec. 12, Ch. 364, L. 1974.

#### **Inconsistent Annexation Law**

If a city can annex an area using existing annexation procedures which are not inconsistent with this act, it may continue

to do so, but the city must follow the procedures of this act in all other instances; accordingly, any annexation of rural fire district land would be inconsistent with this act. *Missoula Rural Fire Dist. v. City of Missoula*, — M —, 540 P 2d 958.

**11-526. Preservation of existing garbage or solid waste service in the event of annexation.** A municipality that annexes or incorporates additional area receiving garbage and solid waste disposal service by a motor carrier authorized by the public service commission to conduct such service may not provide competitive or similar garbage and solid waste disposal service to the area for 3 years following annexation except upon a proper showing to the public service commission that the existing carrier is unable or refuses to provide adequate service to the annexed or incorporated area.

**History:** En. 11-526 by Sec. 1, Ch. 131, L. 1977.

#### **Title of Act**

An act to preserve existing garbage and solid waste services in the event of an-

nexation and prohibit competitive or similar service provided by the municipality for 3 years following annexation except upon a proper showing that existing service is not adequate.

## **CHAPTER 6—PLATS OF CITIES AND TOWNS AND ADDITIONS THERETO**

(Repealed—Section 20, Chapter 500, Laws of 1973)

### **11-601 to 11-614.2, 11-615, 11-616. (4980 to 4994) Repealed.**

#### **Repeal**

Sections 11-601 to 11-614.2, 11-615, 11-616 (Sec. 1, p. 39, L. 1883; Sec. 1, p. 226, L. 1889; Secs. 5000 to 5013, Pol. C. 1895;

Secs. 1 to 6, Ch. 119, L. 1917; Sec. 1, Ch. 48, L. 1921; Sec. 1, Ch. 64, L. 1933; Sec. 1, Ch. 5, L. 1939; Sec. 1, Ch. 20, L. 1943; Sec. 1, Ch. 180, L. 1945; Sec. 1, Ch. 200,

L. 1947; Sec. 1, Ch. 227, L. 1947; Sec. 1, L. 1971), relating to plats of cities and Ch. 82, L. 1953; Sec. 1, Ch. 152, L. 1961; towns and additions thereto, were repealed by Sec. 20, Ch. 500, Laws 1973. Secs. 1, 2, Ch. 295, L. 1969; Sec. 1, Ch. 19,

## CHAPTER 7—OFFICERS AND ELECTIONS

### Section

- 11-702. Officers of city of second and third classes.
- 11-703. Officers of towns.
- 11-709. Biennial elections in cities and towns—terms of office.
- 11-710. Qualification of mayor.
- 11-719. Oath and bonds—vacancy.
- 11-721. Vacancies—how filled—removal of officer.
- 11-725. Salaries and qualifications of mayor and alderman.
- 11-727. Compensation of justices of the peace acting as police judge.
- 11-731. Salary of city clerk.

**11-702. (4996) Officers of city of second and third classes.** The officers of a city of the second and third classes consist of one mayor, two aldermen from each ward, one police judge, one city treasurer, who may be ex officio tax collector, who must be elected by the qualified electors of the city as hereinafter provided. There may also be appointed by the mayor, with the advice and consent of the council, one city clerk, who is ex officio city assessor, one chief of police, one city attorney, and any other officer necessary to carry out the provisions of this title. The city council may prescribe the duties of all city officers, and fix their compensation, subject to the limitations contained in this title. A third class city may retain the county attorney to provide legal services for the city in cases not involving a conflict between the interests of the city and the county either by an interlocal co-operation agreement or by mutual consent by the governing bodies of the city and county.

**History:** En. Sec. 4741, Pol. C. 1895; Amendments  
re-en. Sec. 3217, Rev. C. 1907; re-en. Sec. The 1975 amendment added the last  
4996, R. C. M. 1921; amd. Sec. 1, Ch. 24, sentence.  
L. 1975.

**11-703. (4997) Officers of towns.** The officers of a town consist of one mayor and two aldermen from each ward, who must be elected by the qualified electors of the town as hereinafter provided. There may be appointed by the mayor, with the advice and consent of the council, one clerk, who may be ex officio assessor and tax collector and a member of the council, and one marshal, who may be ex officio street commissioner, and any other officers necessary to carry out the provisions of this title. The town council may prescribe the duties of all town officers, and fix their compensation, subject to the limitations contained in this title.

**History:** En. Sec. 4742, Pol. C. 1895; Amendments  
re-en. Sec. 3218, Rev. C. 1907; re-en. Sec. The 1974 amendment inserted "and tax  
4997, R. C. M. 1921; amd. Sec. 1, Ch. 146, collector" after "assessor" in the second  
L. 1974. sentence; and deleted "and one treasurer,  
who may be ex officio tax collector" before  
"and one marshal" in the second sentence.

**11-709. (5003) Biennial elections in cities and towns—terms of office.** On the first Tuesday of April of every second year a municipal election must be held, at which the qualified electors of each town or city must elect the officers of the city as defined in section 11-701 whose terms of

office will expire, with aldermen to be voted for by the wards they respectively represent; the mayor to hold office for a term of four (4) years, and until the qualification of his successor; and each alderman so elected to hold office for a term of four (4) years, and until the qualification of his successor; and also in cities of the first, second and third class, a police judge and a city treasurer, who shall hold office for a term of four (4) years, and until the qualification of their successors; provided, however, that in the election to be held the first Tuesday of April, 1973, one alderman from each ward will be elected for a term of two (2) years and one alderman from each ward will be elected for a term of four (4) years, and in the next succeeding election and thereafter, one alderman from each ward will be elected for a four (4) year term. The city council shall by resolution determine which office of alderman in each ward shall be for a term of two (2) years and which for four (4) years at the election to be held on the first Tuesday of April, 1973.

History: Ap. p. Sec. 4, p. 122, L. 1893; amd. Sec. 4748, Pol. C. 1895; re-en. Sec. 3224, Rev. C. 1907; re-en. Sec. 5003, R. C. M. 1921; amd. Sec. 1, Ch. 60, L. 1935; amd. Sec. 1, Ch. 193, L. 1971; amd. Sec. 1, Ch. 343, L. 1971.

#### Compiler's Notes

This section was amended twice in 1971, once by Ch. 193 and once by Ch. 343. Neither amendatory act referred to or incorporated the changes made by the other. Chapter 193 was approved on March 3, 1971, and Ch. 343 on March 15, 1971, so that Ch. 343 governs to the extent that they conflict. The only conflict appears to be in the language added by Ch. 193, which referred in two places to the election "to be held on the first Monday of April, 1973." The compiler has therefore made a composite section embodying the changes made by both amendatory acts but substituting "Tuesday" for "Monday" in the language added by Ch. 193.

**11-710. (5004) Qualification of mayor.** No person shall be eligible to the office of mayor unless he shall be at least twenty-one (21) years old and a taxpaying freeholder within the limits of the city or town, and a resident of the state for at least three years, and a resident of the city or town or an area which has been annexed by the city or town for which he may be elected mayor two years next preceding his election to said office, and shall reside in the city or town for which he shall be elected mayor during his term of office.

History: En. Sec. 8, p. 65, Ex. L. 1887; amd. Sec. 4749, Pol. C. 1895; re-en. Sec. 3225, Rev. C. 1907; re-en. Sec. 5004, R. C. M. 1921; amd. Sec. 1, Ch. 76, L. 1961; amd. Sec. 1, Ch. 177, L. 1974.

#### 11-716. (5010) Repealed.

##### Repeal

Section 11-716 (Sec. 4755, Pol. C. 1895; Sec. 5, Ch. 76, L. 1961), relating to resi-

#### Amendments

Chapter 193, Laws of 1971, substituted "the officers of the city as defined in section 11-701 whose terms of office will expire, with aldermen" after "must elect" for "a mayor and two aldermen from each ward"; increased all terms of office from two years to four years; substituted the proviso at the end of the first sentence for a proviso relating to 1936 elections; and added the second sentence.

Chapter 343, Laws of 1971, substituted "Tuesday" for "Monday" in the beginning of the first sentence; deleted the proviso relating to 1936 elections at the end of the first sentence; and made a minor change in style.

#### Effective Date

Section 2 of Ch. 193, Laws 1971 read "This act is effective on December 31, 1972."

#### Amendments

The 1974 amendment reduced the minimum age from 25 to 21 years.

dency requirements for electors, was repealed by Sec. 2, Ch. 40, Laws 1973.



**11-717. (5011) Election judges and clerks—voting places.****Compiler's Notes**

Section 23-601, referred to in this sec-

tion, was repealed by Sec. 248, Ch. 368, Laws 1969.

**11-719. (5013) Oath and bonds—vacancy.** Each officer of a city or town must take the constitutional oath of office, and such as may be required to give bonds, file the same, duly approved, within ten days after receiving notice of his election or appointment; or, if no notice be received, then on or before the date fixed for the assumption by him of the duties of the office to which he may have been elected or appointed, but if anyone, either elected or appointed to office, fails for ten days to qualify as required by law, or enter upon his duties at the time fixed by law, then such office becomes vacant; or if any officer absents himself from the city or town continuously for ten days without the consent of the council, or openly neglects or refuses to discharge his duties, such office may be by the council declared vacant; or if any officer removes from the city or town, or any alderman from his ward, such office must be by the council declared vacant.

**History:** En. Sec. 4758, Pol. C. 1895; re-en. Sec. 3234, Rev. C. 1907; re-en. Sec. 5013, R. C. M. 1921; amd. Sec. 1, Ch. 7, L. 1973.

**Amendments**

The 1973 amendment inserted "constitutional" before "oath of office" near the beginning of the section.

**11-721. (5015) Vacancies—how filled—removal of officer.** When any vacancy occurs in any elective office, the council, by a majority vote of the members, may fill the same for the unexpired term, and until the qualification of the successor. A vacancy in the office of alderman must be filled from the ward in which the vacancy exists, but if the council shall fail to fill such vacancy before the time for the next election, the qualified electors of such city or ward may nominate and elect a successor to such office. The council, upon written charges, to be entered upon their journal, after notice to the party and after trial by the council, by vote of two-thirds of all the members elect, may remove any nonelected officer.

**History:** En. Sec. 1, Ch. 72, L. 1903; re-en. Sec. 3236, Rev. C. 1907; re-en. Sec. 5015, R. C. M. 1921; amd. Sec. 1, Ch. 26, L. 1974.

elector" before "officer" at the end of the section.

**Cross-References**

Filling vacancies in municipal offices after enemy attack, secs. 82-3804, 82-3805.

**Amendments**

The 1974 amendment inserted "non-

**11-721.1. Repealed.****Repeal**

Section 11-721.1 (Sec. 1, Ch. 329, L. 1971), relating to recall of elective offi-

cers, was repealed by Sec. 15, Ch. 364, Laws 1977.

**11-725. (5019) Salaries and qualifications of mayor and alderman.** The maximum annual salary of a mayor must be fixed by ordinance in all classes of cities. No person shall be elected to the office of mayor or alderman in any city or town who is not a resident and freeholder within the limits of the city or town.

**History:** En. Sec. 4764, Pol. C. 1895; re-en. Sec. 3240, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1913; re-en. Sec. 5019, R. C. M.

1921; amd. Sec. 1, Ch. 50, L. 1943; amd. Sec. 1, Ch. 188, L. 1949; amd. Sec. 1, Ch. 115, L. 1951; amd. Sec. 1, Ch. 76, L. 1953;

amd. Sec. 1, Ch. 170, L. 1955; amd. Sec. 1, Ch. 179, L. 1961; amd. Sec. 1, Ch. 142, L. 1963; amd. Sec. 1, Ch. 158, L. 1965; amd. Sec. 1, Ch. 224, L. 1967; amd. Sec. 1, Ch. 297, L. 1969.

#### Amendments

The 1969 amendment inserted "maximum" before "annual salary" and "in all classes of cities" after "ordinance" in the

first sentence; deleted specific maximum salaries for mayors of first, second and third class cities; in the former second paragraph, deleted requirement that salaries of aldermen be fixed by ordinance and specific maximum salaries for alderman of first, second and third class cities, making the last sentence of the former second paragraph the present last sentence.

**11-727. (5021) Compensation of justices of the peace acting as police judge.** In towns, the council may designate a justice of the peace of the county in which the town is situated to act as police judge, and may by ordinance fix his compensation for his services, and the justices of the peace so designated may act as a police judge in all cases arising out of a violation of ordinances where the town is a party. Where the justice of the peace must travel from his town of residence to hold court, he shall be paid per diem and mileage as provided in section 59-801 by the town in which court is held.

**History:** En. Sec. 4766, Pol. C. 1895; re-en. Sec. 3242, Rev. C. 1907; re-en. Sec. 5021, R. C. M. 1921; amd. Sec. 5, Ch. 491, L. 1973; amd. Sec. 1, Ch. 420, L. 1975.

#### Amendments

The 1973 amendment substituted "county" for "township."

The 1975 amendment deleted "not exceeding one hundred dollars per annum"

after "for his services" in the first sentence; substituted "may act as a police judge" for "must act as a police judge" in the first sentence; and added the second sentence.

#### Cross-References

Justice of the peace as acting police judge when judge cannot act, sec. 11-1604.

**11-731. (5025) Salary of city clerk.** The annual salary and compensation of the city clerk must be fixed by ordinance.

**History:** En. Sec. 4770, Pol. C. 1895; re-en. Sec. 3246, Rev. C. 1907; amd. Sec. 1, Ch. 14, L. 1917; re-en. Sec. 5025, R. C. M. 1921; amd. Sec. 1, Ch. 124, L. 1945; amd. Sec. 3, Ch. 188, L. 1949; amd. Sec. 3, Ch. 115, L. 1951; amd. Sec. 5, Ch. 76, L. 1953; amd. Sec. 4, Ch. 170, L. 1955; amd.

Sec. 5, Ch. 179, L. 1961; amd. Sec. 5, Ch. 158, L. 1965; amd. Sec. 1, Ch. 156, L. 1967; amd. Sec. 2, Ch. 146, L. 1974.

#### Amendments

The 1974 amendment deleted "or town" after "city" in the caption and in the text.

### CHAPTER 8—EXECUTIVE POWERS—MAYOR—CLERK—TREASURER—CHIEF OF POLICE AND ATTORNEY

#### Section

11-802. Powers of mayor.

11-802.1. Strong mayor form of government authorized.

11-805.1. Duties of town clerk.

11-805.2. Town clerk to be treasurer.

11-806. Financial statement of city or town—contents—copies, to whom furnished.

11-807. Duties of city treasurer.

**11-802. (5030) Powers of mayor.** The mayor is the chief executive officer of the city or town, and has power:

1 to 3. \* \* \* [Same as parent volume.]

4. To communicate to the council, at the beginning of every session, and oftener if deemed necessary, a statement of the affairs of the city or town, with such recommendations as the mayor may deem proper.

5. To recommend to the council such measures connected with the public health, cleanliness, and ornament of the city or town, and the improvement of the government and finances, as the mayor deems expedient.

6. To approve all ordinances and resolutions of the council adopted by it, and, in case the same do not meet the mayor's approbation, to return the same to the next regular meeting of the council, with all objections in writing, and no ordinance or resolution so vetoed by the mayor must go into effect unless the same be afterwards passed by two-thirds vote of the whole number of members of the council.

7. \* \* \* [Same as parent volume.]

8. To call special meetings of the council, and when so called the mayor must state by message the object of the meeting, and the business of the meeting must be restricted to the object stated.

9 and 10. \* \* \* [Same as parent volume.]

11. To procure and have in the mayor's custody the seal of the city or town.

12. To take and administer oaths.

13. To call on every citizen of the city or town, over the age of eighteen years, to aid in the enforcement of the laws and ordinances in case of riots; to call out the militia to aid the mayor in suppressing the same or other disorderly conduct, preventing and extinguishing fires, for securing the peace and safety of the city, or for carrying into effect any law or ordinance; and any person who does not obey such call forfeits to the city or town a fine not exceeding twenty-five dollars.

14. To require of any of the officers of a city or town an exhibit of such officer's books and papers.

15. To grant pardons and remit fines and forfeitures for offenses against city or town ordinances, when in the mayor's judgment public justice would be thereby subserved; but the mayor must report all pardons granted, with the reasons therefor, to the next council.

16. To perform such other duties as may be prescribed by law or by resolution or ordinance of the council.

17. To exercise such power as may be vested in the mayor by ordinance of the city or town, in and over all places within five miles of the boundaries of the city or town, for the purpose of enforcing the health and quarantine ordinances and regulations thereof.

**History:** Ap. p. Sec. 367, 5th Div. Comp. Stat. 1887; amd. Sec. 13, p. 126, L. 1893; amd. Sec. 4781, Pol. C. 1895; re-en. Sec. 3250, Rev. C. 1907; re-en. Sec. 5030, R. C. M. 1921; amd. Sec. 1, Ch. 535, L. 1975. Cal. Pol. C. Sec. 4386.

#### Amendments

The 1975 amendment deleted "male" before "citizen" near the beginning of subdivision 13; and made minor changes in phraseology.

**11-802.1. Strong mayor form of government authorized.** (1) The qualified electors of any city or town in this state may, in the manner provided in Title 11, chapter 11, cause an ordinance to be adopted which has as its subject the vesting of any or all of the following powers with the office of mayor of such city or town:



(a) To appoint and remove, without consent of the council, all non-elective officers of the city or town.

(b) To exercise absolute control over all departments and divisions of the city or town created in this title, or that may be created by the council.

(c) To appoint one (1) or more administrative assistants to assist him in the direction of the operations of the various city departments and agencies. The administrative assistants shall be answerable solely to the mayor.

(d) To be solely responsible for the preparation of the annual budget in compliance with the procedures set forth in chapter 14 of this title.

(e) To appoint a budget and finance director whose functions shall include the preparation of the annual municipal budget under the direction of the mayor. The budget and finance director shall be answerable solely to the mayor and shall serve at his pleasure.

(2) If any ordinance duly adopted in accordance with this section is in conflict with sections 11-801 or 11-802 above, the provisions of this section shall prevail.

**History:** En. 11-802.1 by Sec. 1, Ch. 359, L. 1973.

a strong mayor form of municipal government; creating a new section to be numbered 11-802.1; and partially implementing article XI, section 3 of the Montana constitution of 1972.

**Title of Act**

An act to allow the qualified electors of any city or town in the state to adopt

**11-805.1. Duties of town clerk.** It shall be the duty of the town clerk:

(1) To receive all moneys that come to the town, either from taxation or otherwise, and to pay the same out on the warrant of the mayor, countersigned by the clerk, drawn in accordance with law.

(2) To perform such duties in the collection of taxes, licenses, or assessments as are or may be prescribed by law or ordinances.

(3) To present on the first Monday of each month to the council a full and detailed statement of the amounts of money belonging to the town, received by him and by him disbursed during the preceding month, and the state of each particular fund, which statement must be verified by his oath.

(4) To keep the books and accounts of the city or town in such manner as to correctly present the condition of the finances thereof, which must always be open to the inspection of the mayor, council, or any member thereof.

(5) To keep a separate account of each fund or appropriation, and the debits and credits thereof.

(6) To give every person paying to him money as town clerk, a receipt therefor, specifying the date of payment, the amount, and for what paid.

(7) To render at any time an account to the council, showing the money on hand and the condition of the treasury.

(8) To keep a register of all warrants paid, which must show the date, amount, and number, and the person to whom, and the fund from which the same was paid.

(9) To annually make out and submit to the town council, at its last meeting prior to May first, a detailed account of all receipts and expenditures during the past fiscal year, and an abstract thereof must be published in some newspaper in the city or town, or, if none is published, such abstract must be posted in the room or building occupied by the council.

(10) To pay out, in the order which they are registered, all warrants presented for payment, when there are funds in the treasury to pay the same.

(11) To deposit all public moneys in his possession and under his control, excepting such as may be required for current business, in any solvent bank or banks located in such city or town, subject to national supervision or state examination, as the council shall designate, and no other, and the sums so deposited shall bear interest at the rate of two and one-half per centum per annum, payable quarter-annually.

(12) To attend all meetings of the council, to record and sign the proceedings thereof and all ordinances, bylaws, resolutions, and contracts passed, adopted, or entered into, and to sign, number, and keep a record of all licenses, commissions, or permits granted or authorized by the council.

(13) To enter in a book all ordinances, resolutions, and bylaws passed and adopted by the council. Such book is called "The Ordinance Book."

(14) To enter in a book kept for that purpose the date, amount, and person in whose favor and for what purpose warrants are drawn upon the town treasury.

(15) To countersign and cause to be published or posted, as provided by law, all ordinances, bylaws, or resolutions passed and adopted by the council.

(16) To file and keep all records, books, papers, or property belonging to the town, and to deliver the same to his successor when qualified.

**History:** En. 11-805.1 by Sec. 4, Ch. 146, L. 1974.

**Title of Act**

An act expanding the position of town

clerk; abolishing the position of town treasurer; transferring the duties of a town treasurer to the town clerk; and amending sections 11-703, 11-731, and 11-807, R. C. M. 1947.

**11-805.2. Town clerk to be treasurer.** The statutory functions and duties of a town treasurer provided in this title are transferred to the town clerk. Any reference to a town treasurer in the Revised Codes of Montana, 1947, means the town clerk.

**History:** En. 11-805.2 by Sec. 5, Ch. 146, L. 1974.

**Repealing Clause**

Section 6 of Ch. 146, Laws 1974 read "All statutes and sections of statutes in conflict with this act are repealed."

**Separability Clause**

Section 7 of Ch. 146, Laws 1974 read "The provisions of this act are severable, and if any application, part or provision is held void the decision of the court so holding shall not affect or impair any other application, part or provision of this act."

**11-806. (5033.1) Financial statement of city or town—contents—copies, to whom furnished.** (1) Within sixty (60) days after the close of each fiscal year the city or town clerk of each city and town must make out,

in duplicate, a complete statement of the financial condition of the city or town for that fiscal year, showing:

(a) The indebtedness of the city or town, funded and floating; the amount of each class of indebtedness; and the amount of money in the treasury subject to the payment of each class of indebtedness;

(b) The amount of money received from taxes upon real and personal property;

(c) The amount of money received from fines, penalties, and forfeitures;

(d) The amount of money received from licenses;

(e) The amount of money received from all other sources, each source and the amount received from it being shown separately;

(f) For each fund the amount of money, if any, on hand at the beginning of the fiscal year, the amount received and the amount paid out during the fiscal year. The amount of money paid out must be deducted from the total of the money on hand at the beginning of the fiscal year and the money received during the year, and a balance must be struck for each fund.

(g) A concise description of all property owned by the city or town with an approximate estimate of the value of it;

(h) The rates of taxation and purposes for which taxes were levied during the fiscal year;

(i) Other information which may be required by the department of community affairs.

(2) The forms on which the statement shall be made shall be prescribed by the department of community affairs.

(3) The city or town clerk must, not later than August 31 following the close of each fiscal year, transmit one copy of the statement to the department of community affairs, and must present the other copy to the city or town council or commission at its first regular meeting in September.

(4) If a city or town clerk fails to file a copy of the statement with the department of community affairs within the time specified, the department of community affairs, without delay, shall examine the books, records, and accounts of the city or town. The department of community affairs shall make from its examination a statement of the financial condition of the city or town for the preceding fiscal year in the manner it should have been made by the city or town clerk. The examination shall be considered a special examination under the provisions of section 82-4504, and all of the provisions of section 82-4504 apply to it.

**History:** En. Sec. 1, Ch. 24, L. 1927; amd. Sec. 1, Ch. 19, L. 1945; amd. Sec. 48, Ch. 348, L. 1974; amd. Sec. 11, Ch. 213, L. 1975.

#### Compiler's Notes

Section 82-4504, referred to herein, was repealed by Sec. 18, Ch. 380, Laws 1975, effective July 1, 1976. For present law, see section 82-4529.

#### Amendments

The 1974 amendment substituted refer-

ences to the department of intergovernmental relations in subdivisions throughout this section; substituted references to section 82-4504 at the end of subsection (4) for reference to section 5-910; and made numerous changes in style, punctuation and phraseology.

The 1975 amendment substituted "department of community affairs" for "department of intergovernmental relations" throughout the section.



**11-807. (5034) Duties of city treasurer.** It shall be the duty of the city treasurer:

1. To receive all moneys that come to the city, either from taxation or otherwise, and to pay the same out on the warrant of the mayor, countersigned by the clerk, drawn in accordance with law.

2. \* \* \* [Same as parent volume.]

3. To present on the first Monday of each month to the council a full and detailed statement of the amounts of money belonging to the city, received by him and by him disbursed during the preceding month, and the state of each particular fund, which statement must be verified by his oath.

4. To keep the books and accounts of the city in such manner as to correctly present the condition of the finances thereof, which must always be open to the inspection of the mayor, council, or any member thereof.

5. to 8. \* \* \* [Same as parent volume.]

9. To annually make out and submit to the city council, at its last meeting prior to May first, a detailed account of all receipts and expenditures during the past fiscal year, file the same with the clerk, and an abstract thereof must be published in some newspaper in the city, or, if none is published, such abstract must be posted in the room or building occupied by the council.

10. \* \* \* [Same as parent volume.]

11. To deposit all public moneys in his possession and under his control, excepting such as may be required for current business, in any solvent bank or banks located in such city, subject to national supervision or state examination, as the council shall designate, and no other, and the sums so deposited shall bear interest at the rate of two and one-half percentum per annum, payable quarter-annually.

History: En. Sec. 4788, Pol. C. 1895; re-en. Sec. 3257, Rev. C. 1907; amd. Sec. 2, Ch. 88, L. 1913; re-en. Sec. 5034, R. C. M. 1921; amd. Sec. 3, Ch. 146, L. 1974. Cal. Pol. C. Sec. 4392.

#### Amendments

The 1974 amendment deleted "or town" after "city" throughout this section.

## CHAPTER 9—POWERS OF CITY AND TOWN COUNCILS

### Section

11-911.1. Electric wheelchairs may be operated on streets.

11-911.2. City and towns may regulate.

11-927. Prevention of and punishment for disturbing the peace.

11-950. Penalties for violations of ordinances—limitations.

11-964.1. City or town authorized to sell or trade property to county or political subdivision—resolution and notice of intent.

11-964.2. City or town authorized to obtain property by trade or purchase from county or political subdivision—appraisal unnecessary.

11-966. Purposes for which indebtedness may be incurred—limitation—additional indebtedness for sewer or water system—procuring water supply and system—jurisdiction of public works appurtenances.

11-982. Creation of special improvement districts—assessments—expenses payable in warrants—interest on warrants.

11-988. Power of cities and towns to acquire natural gas and distributing system.

11-990. Shoplifting.

**11-901. (5039) Powers of city councils.****Estoppel to Repudiate Acts of Officers**

Although a municipal corporation is not bound by acts or statements of its officers made in excess of their authority, where an innocent party has been induced into a course of action by the conduct of mu-

nicipal officers, and because of such reliance would suffer a substantial loss, the municipality will not be permitted to deny the validity of its officers' actions. State ex rel. Barker v. Town of Stevensville, — M —, 523 P 2d 1388.

**11-904. (5039.3) Issuing licenses.****Mandamus**

Actions of town council in refusing to issue a mobile home court license until petitioner had removed a house which encroached onto a public alley, was not an

abuse of discretion, and mandamus will not lie to compel the issuance of the license. State ex rel. Barnes v. Town of Belgrade, — M —, 524 P 2d 1112.

**11-905. (5039.4) Building or hiring and lighting, etc.****Installment Contracts**

City can finance construction of municipal buildings by installment contract under section 11-1202 as well as by bond is-

sue or borrowing under section 11-966. Greener v. City of Great Falls, 157 M 376, 485 P 2d 932.

**11-906. (5039.5) Streets, alleys, sidewalks, etc.****Erection of School Fence**

The installation of a fence bordering school playground but located on land that was actually part of the dedicated street,

was an alteration or improvement of the street, and was within the police powers of the city. State ex rel. Smart v. City of Big Timber, — M —, 528 P 2d 688.

**11-910. (5039.7) Regulation of public ways and grounds, etc.****Encroachments**

Although a town has direct authority to require removal of an encroachment, it may do so indirectly by tying the removal

of the encroachment to the issuance of a license. State ex rel. Barnes v. Town of Belgrade, — M —, 524 P 2d 1112.

**11-911.1. Electric wheelchairs may be operated on streets.** A person who by reason of physical disability is unable to move about as a pedestrian may operate a self-propelled wheelchair or similar vehicle, during daylight hours, on the streets of a city or town. When operated on public streets, such vehicles must display the slow-moving equipment emblem required in section 32-21-130(1), or be equipped with a windwhip displaying a red flag.

**History:** En. 11-911.1 by Sec. 2, Ch. 369, L. 1974.

**Title of Act**

An act providing for licensing handi-

capped persons to operate motor-driven wheelchairs and similar vehicles; exempting such vehicles from registration; requiring certain safety features; and amending section 53-104, R. C. M. 1947.

**11-911.2. City and towns may regulate.** Use of self-propelled wheelchairs and similar vehicles may be regulated by cities and towns.

**History:** En. 11-911.2 by Sec. 3, Ch. 369, L. 1974.

**11-927. (5039.24) Prevention of and punishment for disturbing the peace.** The city or town council has power: To prevent and punish in-

toxication (subject to the limits established in section 80-2723), fights, riots, loud noises, disorderly conduct, obscenity, and acts or conduct calculated to disturb the public peace, or which are offensive to public morals, within the city or town, and within three miles of the limits thereof.

**History:** En. Subd. 25, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; amd. Sec. 16, Ch. 302, L. 1974; amd. Sec. 1, Ch. 403, L. 1975. See also history of 11-901.

#### Amendments

The 1974 amendment inserted the parenthetical phrase.

The 1975 amendment substituted "section 80-2723" for "section 69-6224."

### 11-932. (5039.29) Regulation of explosives and inflammable material.

#### Gasoline Within Three-Mile Limit

Ordinance regulating installation and use of coin-operated gasoline dispensing devices located outside, but within three

miles of city limits was proper exercise of city's authority under statute. State ex rel. Pat Griffin Co. v. City of Butte, 151 M 546, 445 P 2d 739.

### 11-935. (5039.32) Abatement of and regulation concerning nuisances.

#### Provision of Specific Penalty

Defendant, who was convicted for maintaining public nuisance, was improperly sentenced to jail under section 11-950,

since this section provides specific penalty for nuisance which does not include imprisonment. City of Billings v. Trenka, 155 M 27, 465 P 2d 838.

### 11-950. (5039.47) Penalties for violations of ordinances—limitations.

The city or town council has power: To impose fines and penalties for the violation of any city ordinance, but no fine or penalty may exceed five hundred dollars (\$500), and no imprisonment may exceed six (6) months for any one offense.

**History:** En. Subd. 48, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; amd. Sec. 1, Ch. 202, L. 1974. See also history of section 11-901.

#### Amendments

The 1974 amendment increased the maximum fine from \$300 to \$500; and increased the maximum imprisonment from 90 days to 6 months.

#### Imposition of Jail Sentence

Defendant, who was convicted for maintaining public nuisance, was improperly sentenced to jail under this section since section 11-935 provides specific penalty for nuisance which does not include imprisonment. City of Billings v. Trenka, 155 M 27, 465 P 2d 838.

### 11-951. (5039.48) Repealed.

#### Repeal

Section 11-951 (Subd. 49, Sec. 5039, R. C. M. 1921; Sec. 1, Ch. 115, L. 1925; Sec. 1, Ch. 20, L. 1927; Sec. 9, Ch. 240, L.

1971; Sec. 10, Ch. 94, L. 1973), relating to the poll tax, was repealed by Sec. 1, Ch. 119, Laws of 1974.

### 11-958. (5039.55) Repealed.

#### Repeal

Section 11-958 (Subd. 56, Sec. 5039, R. C. M. 1921; Sec. 1, Ch. 115, L. 1925; Sec. 1, Ch. 20, L. 1927), relating to the

power of city and town councils to establish standard weights and measures was repealed by Sec. 43, Ch. 99, Laws 1969.

**11-964.1. City or town authorized to sell or trade property to county or political subdivision—resolution and notice of intent.** A city or town upon first passing a resolution of intent to do so and upon giving notice of such intent by publication once a week for three (3) weeks in a news-



paper published in such city or town or county in which located, shall have power to sell or trade, as the interests of its inhabitants require, any property, however held or acquired, which is not necessary for the conduct of the city or town business, to any county or political subdivision, without an ordinance, public notice, public auction, bids, or appraisal; proceeds, if any, shall be distributed according to law. Such transactions shall be made by resolution of councils or commissions involved and entered in the minutes of the regular or special meetings.

**History:** En. Sec. 1, Ch. 301, L. 1969.

**Title of Act**

An act to permit cities or towns power

to sell or trade property to any county or political subdivision; and to provide for the purchase thereof, by a city or town without appraisal.

**11-964.2. City or town authorized to obtain property by trade or purchase from county or political subdivision—appraisal unnecessary.** A city or town shall have power to trade with, or purchase from, any county or political subdivision such property without an appraisal of the property traded or purchased.

**History:** En. Sec. 2, Ch. 301, L. 1969.

purchase property, secs. 16-1007.1 and 16-1009.1.

**Cross-References**

Counties authorized to sell, trade or

**11-966. (5039.63) Purposes for which indebtedness may be incurred—limitation—additional indebtedness for sewer or water system—procuring water supply and system—jurisdiction of public works appurtenances.** The city or town council has power: (1) To contract an indebtedness on behalf of a city or town, upon the credit thereof, by borrowing money or issuing bonds for the following purposes, to wit: Erection of public buildings, construction of sewers, sewage treatment and disposal plants, bridges, docks, wharves, breakwaters, piers, jetties, moles, waterworks, reservoirs and reservoir sites, lighting plants, supplying the city or town with water by contract, the purchase of fire apparatus, street and other equipment, the construction or purchase of canals or ditches and water rights for supplying the city or town with water, building, purchasing, constructing and maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water, to acquire, open and/or widen any street and to improve the same by constructing, reconstructing and repairing pavement, gutters, curbs and vehicle parking strips and to pay all or any portion of the cost thereof, and the funding of outstanding warrants and maturing bonds; provided, that the total amount of indebtedness authorized to be contracted in any form, including the then existing indebtedness, must not, at any time, exceed five per centum (5%) of the total value of the taxable property of the city or town, as ascertained by the last assessment for state and county taxes; provided, that no money must be borrowed on bonds issued for the construction, purchase, or securing of a water plant, water system, water supply, sewage treatment and disposal plant, or sewerage system, until the proposition has been submitted to a vote and the majority vote cast in favor thereof; and, further provided, that an additional indebtedness shall be incurred, when necessary, to construct a sewerage system or procure a water supply for the said city or

town, which shall own or control said water supply and devote the revenue derived therefrom to the payment of the debt.

(2) The additional indebtedness authorized, including all indebtedness theretofore contracted, which is unpaid or outstanding, for the construction of a sewerage system, or for the procurement of a water supply, or for both such purposes, shall not exceed in the aggregate ten per centum (10%) over and above the five per centum (5%) heretofore referred to, of the total valuation of the taxable property of the city or town as ascertained by the last assessment for state and county taxes; and, provided further, that the above limit of five per centum (5%) shall not be extended, unless the question shall have been submitted to a vote and carried in the affirmative by a vote of the majority of the electors who vote upon such question.

(3) and (4). \* \* \* [Same as parent volume.]

**History:** En. Subd. 64, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; amd. Sec. 1, Ch. 35, L. 1947; amd. Sec. 1, Ch. 152, L. 1953; amd. Sec. 1, Ch. 34, L. 1955; amd. Sec. 1, Ch. 38, L. 1959; amd. Sec. 1, Ch. 158, L. 1963; amd. Sec. 1, Ch. 100, L. 1973. See also history of section 11-901.

#### Amendments

The 1973 amendment deleted from the first proviso to subdivision (1) a clause defining "value of the taxable property" in the same sense as in section 6 of article XIII of the 1889 constitution; deleted "of the taxpayers affected thereby" following

"vote" in the second proviso to subdivision (1) and again in the proviso to subdivision (2); and made minor changes in phraseology.

#### Installment Contracts

City can finance construction of municipal buildings by installment contract under section 11-1202 as well as by bond issue or borrowing under this section and has implied power to allocate proportionate share of cost of construction among various city departments using the facility. *Greener v. City of Great Falls*, 157 M 376, 485 P 2d 932.

### 11-977. (5039.74) Power of condemnation.

#### Right to Condemn Property

City's only authority to condemn on a "area" basis is section 11-3908; passage of city ordinance declaring condemnation for

urban renewal of blighted areas did not create conclusive presumption of public use and necessity. *City of Helena v. DeWolf*, — M —, 508 P 2d 122.

### 11-980. (5039.77) Printing contract.

#### Cross-References

Printing defined, sec. 19-103.1.

**11-982. (5039.79) Creation of special improvement districts—assessments—expenses payable in warrants—interest on warrants.** The city or town council has power: To create special improvements districts, designating the same by number; to extend the time for payment of assessments levied upon such districts for the improvements thereon for a period not exceeding twenty (20) years; to make such assessments payable in installments, and to pay all expenses of whatever character incurred in making such improvements with special improvement warrants.

**History:** En. Subd. 80, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; amd. Sec. 11, Ch. 234, L. 1971. See also history of section 11-901.

#### Amendments

The 1971 amendment deleted from the end of the section "which warrants shall bear interest at a rate not to exceed six per centum per annum"; and made a minor change in style.



**11-988. (5039.85) Power of cities and towns to acquire natural gas and distributing system.** The city or town council has power to contract an indebtedness of a city or town upon the credit thereof by borrowing money or issuing bonds for the construction, purchase, or development of an adequate supply of natural gas and to construct or purchase a system of gas lines for the distribution thereof to the inhabitants of the city or town or vicinity. The total amount of indebtedness authorized to be contracted in any form, including the then-existing indebtedness, must not at any time exceed 11% of the total taxable value of the property of the city or town subject to taxation as ascertained by the last assessment for state and county taxes. No money may be borrowed or bonds issued for the purposes specified in this section until the proposition has been submitted to the vote of the taxpayers of the city or town affected thereby and the majority vote cast in its favor.

**History:** En. Sec. 1, Ch. 128, L. 1927; amd. Sec. 22, Ch. 566, L. 1977.

of the total taxable value" in the second sentence for "three per centum (3%) of the total assessed valuation"; and made minor changes in phraseology, punctuation and style.

#### **Amendments**

The 1977 amendment substituted "11%

**11-990. Shoplifting.** The city or town council has power to define shoplifting as theft in conformance with law, and to punish persons found guilty thereof.

**History:** En. 11-990 by Sec. 5, Ch. 274, L. 1974.

#### **Separability Clause**

Section 6 of Ch. 274, Laws 1974 read "It is the intent of the legislature that if a part of this act is invalid, all valid

parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from its invalid applications."

## **CHAPTER 10—POWERS OF CITY AND TOWN COUNCILS (continued)**

### **Section**

- 11-1001. Authorization of cities and towns to furnish water and sewage service to industries and to persons without city limits—rates—penalty for violations.
- 11-1011. Tax levy for band concerts.
- 11-1019. Operation of bus lines—contracting indebtedness.
- 11-1023. Contracting with department of highways or federal agencies regarding construction or reconstruction of highways, streets, and roads.
- 11-1024. Group insurance for public employees and officers.
- 11-1024.1. Group insurance for firefighters—payment of premium.
- 11-1024.2. Special funding.
- 11-1024.3. Group insurance for policemen—payment of premium.
- 11-1024.4. Funding.
- 11-1025. Purpose and policy.

**11-1001. (5040.1) Authorization of cities and towns to furnish water and sewage service to industries and to persons without city limits—rates—penalty for violations.** (1) The city or town council of any city or town within the state of Montana, that owns and operates a municipal water system and/or a municipal sewage system, to furnish water and/or sewage services to the inhabitants of such city or town, as a public utility, shall, in addition to all other powers, have power to furnish water from such water system and sewage services from such sewage system, to any person, factory or other industry, located within the corporate limits of



such city or town, or to any person, factory or other industry located outside the corporate limits of such city or town, at reasonable rates filed by the city or town council and approved by the public service commission [provided that delivery of water and delivery of sewage services by any such city or town] to or for the use of any person, factory or other industry located outside the corporate limits of such city or town shall be made within, or at the boundary line of the corporate limits of such city or town, or from any existing water line or sewer line of such city or town located outside of the corporate limits of such city or town, except as hereinafter provided.

(2) The city council of any city within the state of Montana that owns and operates a municipal water system and/or a municipal sewer system to furnish water and sewer services to the inhabitants of such city, as a public utility, shall, in addition to all other powers, have power to furnish water from such water system and sewage services from such sewer system to the inhabitants or to any person, factory, industry or producer of farm or other products located outside of the corporate limits of such city, at reasonable rates filed by the city or town council and approved, when otherwise required by statute, by the public service commission and such city council is further empowered to make collections for furnishing water and sewer services in the same manner as collections are made within the corporate limits.

(3) Any person, firm or corporation residing either inside or outside of the corporate limits of a city owning a municipal water system and/or a municipal sewer system which furnishes water or sewer services as a public utility, who shall willfully turn on the water or sewer line after the same shall have been shut off by or under the direction of the said city for nonpayment of water charges or sewer charges, or who shall unlawfully take water from such water system or shall unlawfully make use of such sewer system shall be guilty of a misdemeanor.

(4) Any person, firm or corporation receiving water or sewer service outside of incorporated city limits may be required by the city or town as a condition to initiate such service to consent to annexation of the tract of property served by the city or town. The consent to annexation is limited to that tract or parcel or portion of tract or parcel that is clearly and immediately and not potentially being serviced by the said water or sewer service.

History: En. Sec. 1, Ch. 71, L. 1925; amd. Sec. 1, Ch. 134, L. 1929; amd. Sec. 1, Ch. 6, L. 1955; amd. Sec. 1, Ch. 63, L. 1957; amd. Sec. 1, Ch. 194, L. 1961; amd. Sec. 1, Ch. 229, L. 1971.

#### Amendments

The 1971 amendment inserted references to sewage systems, sewage services and sewer lines throughout the section; inserted "when otherwise required by statute" in the latter part of subsection (2);

added subsection (4); and made minor changes in punctuation.

#### Duty of City

City which undertook pursuant to this section to furnish water to individuals and businesses outside city limits could not refuse service request of business within its service area. *City of Polson v. Public Service Commission*, 155 M 464, 473 P 2d 508.

**11-1011. (5048) Tax levy for band concerts.** For the purpose of providing band concerts, the council or other governing body in any town

or city of the first, second, or third class or of any incorporated town may assess and levy, in addition to the levy for general municipal or administrative purposes, an amount not to exceed 1 mill on the dollar on the taxable value of the property of the city or town subject to taxation.

**History:** En. Sec. 2, Ch. 167, L. 1921; re-en. Sec. 5048, R. C. M. 1921; amd. Sec. 23, Ch. 566, L. 1977.

#### Amendments

The 1977 amendment deleted "as in this

act provided" after "concerts" near the beginning of the section; substituted "taxable value" near the end of the section for "assessed value"; and made minor changes in phraseology, punctuation and style.

**11-1019. Operation of bus lines—contracting indebtedness.** Whenever a city or town is not being served by a bus company or operator operating on a regular schedule and under the jurisdiction of the public service commission or if such service is likely to be discontinued in the immediate future, the city or town council of any incorporated city or town may contract an indebtedness of any such city or town upon the credit thereof by borrowing money or issuing bonds for the purchase, development, operation, or leasing of motor buses and bus lines for the transportation of passengers within the corporate limits of such cities and towns and to operate the same to any point or points beyond these limits not to exceed 8 miles, measured along the route of the bus line. The total amount of indebtedness authorized to be contracted in any form, including the then-existing indebtedness, may not at any time exceed 18% of the total taxable value of the property of the city or town subject to taxation as ascertained by the last assessment for state and county taxes. No money may be borrowed or bonds issued for the purposes specified in this section until the proposition has been submitted to the vote of the taxpayers of the city or town and the majority vote cast in its favor.

**History:** En. Sec. 1, Ch. 101, L. 1951; amd. Sec. 1, Ch. 211, L. 1955; amd. Sec. 1, Ch. 120, L. 1957; amd. Sec. 21, Ch. 315, L. 1974; amd. Sec. 24, Ch. 566, L. 1977.

#### Amendments

The 1974 amendment substituted "public service commission" for "Montana railroad and public service commission."

The 1977 amendment substituted "18% of the total taxable value" in the second sentence for "five per centum (5%) of the total assessed valuation"; deleted "affected thereby" after "taxpayers" in the last sentence; and made minor changes in phraseology, punctuation and style.

### 11-1020. Operation subject to Motor Carrier Act—exception.

#### Compiler's Notes

Section 8-128, contained in the reference to sections 8-101 to 8-129 in this section,

was repealed by Sec. 6, Ch. 6, Ex. Laws 1969.

### 11-1021. Contracts or lease arrangements, etc.

#### Compiler's Notes

Section 21, Ch. 315, Laws 1974, substituted "public service commission" in

this section for "Montana railroad and public service commission."

**11-1023. Contracting with department of highways or federal agencies regarding construction or reconstruction of highways, streets, and roads.** The city council, commission or other governing body of any city or town may, whenever highway construction work is to be financed in whole or in part by federal funds, contract jointly or independently with the depart-

ment of highways, United States federal highway administration, or other federal agency, for the construction or reconstruction of highways, roads and streets, to acquire rights of way, and do any other thing essential and practical in securing the highway, road and street construction or reconstruction or rights of way as may be agreed upon between the city council, commission or other governing body and the department of highways or federal agency. All contracts for work on highways, roads and streets which are let pursuant to this authority shall be let by the highway commission.

**History:** En. Sec. 1, Ch. 69, L. 1957; amd. Sec. 1, Ch. 316, L. 1974.

**Amendments**

The 1974 amendment substituted "department of highways" in the first sen-

tence for references to the state highway commission; substituted "federal highway administration" in the first sentence for "bureau of public roads"; and made minor changes in phraseology.

**11-1024. Group insurance for public employees and officers.** (1) All departments, bureaus, boards, commissions and agencies of the state of Montana, and all counties, cities and towns shall upon approval by two-thirds vote of the officers and employees of each such department, bureau, board, commission, agency, county, city and town, enter into group hospitalization, medical, health including long-term disability, accident and/or group life insurance contracts or plans for the benefit of their officers, employees and their dependents.

(2) (a) The respective administrative and governing bodies shall contribute the amount specified in this section towards the insurance premium. For employees defined in subsection (5) of this section, other than members of collective bargaining units, and for members of the legislature, the employer contribution for insurance shall be \$240 per year for the fiscal year ending June 30, 1978, and \$360 per year for each fiscal year thereafter. The employer shall prorate this amount for employees who work less than 2,080 hours per year. For employees of elementary and high school districts and of local government units, the employer's premium contributions may exceed but shall not be less than \$10 per month.

(b) For state employee members of a collective bargaining unit, the employer shall pay the amount negotiated with the collective bargaining unit.

(3) An insurance contract or plan issued after June 30, 1977, under this section must contain provisions that:

(a) permit the member of a group who retires from active service under the appropriate retirement provisions provided by law to remain a member of the group until he becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended, unless he is a participant in another group plan with substantially the same or greater benefits at an equivalent cost or unless he is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost;

(b) permit the surviving spouse of a member to remain a member of the group as long as the spouse is eligible for retirement benefits accrued by the deceased member as provided by law unless the spouse is eligible



for medicare under the federal Health Insurance for the Aged Act or unless the spouse has or is eligible for equivalent insurance coverage as provided in subsection (3)(a);

(c) permit the surviving children of a member to remain members of the group as long as they are eligible for retirement benefits accrued by the deceased member as provided by law unless they have equivalent coverage as provided in subsection (3)(a) or are eligible for insurance coverage by virtue of the employment of a surviving parent or legal guardian.

(4) A person electing to remain a member of the group under subsection (3) must pay the full premium for his coverage and for that of his covered dependents.

(5) In this section, as it applies to a person employed in the executive or legislative branches of state government, "employee" means:

(a) a permanent full-time employee defined in 59-1007.1;

(b) a part-time employee defined in 59-1007.1 who is scheduled to work at least twenty (20) hours per week;

(c) a person employed in a seasonal position defined in 59-1007.1 who is employed on a regular basis at least 8 months of the fiscal year.

**History:** En. Sec. 1, Ch. 174, L. 1957; amd. Sec. 1, Ch. 83, L. 1965; amd. Sec. 1, Ch. 200, L. 1967; amd. Sec. 1, Ch. 220, L. 1969; amd. Sec. 1, Ch. 382, L. 1971; amd. Sec. 1, Ch. 188, L. 1974; amd. Sec. 1, Ch. 359, L. 1975; amd. Sec. 1, Ch. 437, L. 1975; amd. Sec. 1, Ch. 259, L. 1977; amd. Sec. 11, Ch. 563, L. 1977.

#### Compiler's Notes

This section was amended twice in 1977, once by Ch. 259 and once by Ch. 563. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

#### Amendments

The 1969 amendment made the group insurance program mandatory, deleted provision for payment of one-half of total premium not to exceed \$7.50 per month and made payment of that amount mandatory; and deleted a proviso dealing with budget aspects of premiums.

The 1971 amendment inserted "including long-term disability" after "health" in the first half of subsection (1); increased the employer contribution from \$7.50 to \$10 per employee per month in subsection (1); added the proviso at the end of the first sentence of subsection (1) reading "and provided for employees of educational institutions \* \* \* one hundred twenty dollars (\$120) per year"; and made a minor change in punctuation.

The 1974 amendment substituted "shall pay for such insurance ten dollars" for "shall pay as part of the officers and employees salary ten dollars" near the mid-

dle of the first sentence of subsection (1); added the second sentence of subsection (1); and made a minor change in phraseology.

Chapter 359, Laws of 1975, inserted "and of local government units" in the second sentence of subsection (1); substituted "the employer's premium contributions may exceed but shall not be less than the amount specified in this section" for "premium contributions are not subject to the ten dollar (\$10) limitation of this section" at the end of subsection (1); and made a minor change in phraseology.

Chapter 437, Laws of 1975, numbered subsection (1); inserted "and legislator" after "each officer, employee" near the end of the first sentence in subsec. (1); substituted "and provided that for all employees as defined in subsection (2) of this section and for members of the legislature" near the end of the first sentence of subsec. (1) for "and provided for employees of educational institutions whose employment contracts show at a minimum a full-time academic year of employment"; added subsec. (2); and made minor changes in phraseology.

Chapter 259, Laws of 1977, divided former subsection (1) into subsections (1) and (2); substituted, near the middle of subsection (2), "subsection (5)" for "subsection (2)"; inserted subsections (3) and (4); redesignated former subsection (2) as subsection (5); and made minor changes in phraseology, punctuation and style.

Chapter 563, Laws of 1977, substituted "the amount specified in this section" in the first sentence of subdivision (2)(a)

for "ten dollars (\$10) per month for each officer, employee, and legislator"; inserted "other than members of collective bargaining units" near the middle of the second sentence of subdivision (2)(a); substituted "shall be \$240 per year for the fiscal year ending June 30, 1978 and \$360 per year for each fiscal year thereafter" at the end of the second sentence of subdivision (2)(a) for "may be an amount equal to twelve (12) times the monthly rate, but may not exceed one hundred twenty dollars (\$120) per year"; inserted the third sentence in subdivision (2)(a); substituted "\$10 per month" at the end of the fourth sentence of subdivision (2)(a) for "the amount specified in this section"; added paragraph designated (2)(b); and made minor changes in phraseology, punctuation and style.

#### Repealing Clause

Section 2 of Ch. 220, Laws 1969 read "Section 2 of chapter 200, Laws of Montana, 1967, is repealed."

#### Effective Date

Section 2 of Ch. 188, Laws 1974 provided

the act should be in effect from and after its passage and approval. Approved March 12, 1974.

Section 2 of Ch. 437, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved April 14, 1975.

#### Funding

Section 2 of Ch. 359, Laws 1975 read "In compliance with section 43-517, the administration of this act is declared a public purpose of a county, city, or town which may be in addition to any other levy and may be paid out of the general fund of the governing body and financed by a levy on the taxable value of property within the county, city, or town."

#### School Health Insurance Contribution

School district contribution of \$35 per month to teachers' medical insurance costs, made pursuant to opinion of the attorney general but prior to enactment of the exception provision of this statute, was not unlawful. *Duffy v. Butte Teachers' Union No. 332*, — M —, 541 P 2d 1199.

**11-1024.1. Group insurance for firefighters—payment of premium.** Cities of the first and second class, if they provide insurance for other city employees under section 11-1024 shall:

- (a) provide the same insurance to their respective firefighters;
- (b) pay the full premium of each firefighter's insurance coverage for the firefighter and his dependents notwithstanding the provisions of section 11-1024.

**History:** En. 11-1024.1 by Sec. 1, Ch. 39, L. 1975.

#### Compiler's Notes

Another section, which was enacted by Sec. 1, Ch. 308, Laws 1975 and was designated section 11-1024.1, was redesignated section 11-1024.3 by the compiler.

#### Title of Act

An act to require cities of the first and second class to pay full premium for insurance provided under section 11-1024, R. C. M. 1947, to firefighters in the respective cities, and to provide authority to raise the local mill levy if necessary.

**11-1024.2. Special funding.** Those incorporated cities and towns which require additional funds to finance the provisions of this act may levy on property by the amount required to meet these provisions, a tax not to exceed two (2) mills on the dollar upon all property in the respective city or town. This levy shall be collected in the same manner and at the same time as other taxes are levied.

**History:** En. 11-1024.2 by Sec. 2, Ch. 39, L. 1975.

#### Compiler's Notes

Another section, which was enacted by Sec. 2, Ch. 308, Laws 1975 and was designated section 11-1024.2, was redesignated section 11-1024.4 by the compiler.

**11-1024.3. Group insurance for policemen—payment of premium.** Cities of all classes, if they provide insurance for other city employees under section 11-1024 shall:

(1) provide the same insurance to their respective policemen;

(2) notwithstanding section 11-1024, pay the full premium of each policeman's insurance coverage for the policeman and his dependents.

**History:** En. 11-1024.3 by Sec. 1, Ch. 308, L. 1975.

**Title of Act**

An act to require cities of all classes to pay full premium for insurance provided under section 11-1024, R. C. M. 1947, to police in the respective cities, and to provide authority to raise the local mill levy if necessary.

**Compiler's Notes**

As enacted this section was designated section 11-1024.1, but was redesignated by the compiler because a section 11-1024.1 had previously been enacted by Sec. 1, Ch. 39, Laws 1975.

**11-1024.4. Funding.** In compliance with section 43-517, the administration of this act is declared a public purpose of a city which may be paid out of the general fund of the governing body and financed by a levy not to exceed two (2) mills on the taxable value of property within the city or town.

**History:** En. 11-1024.4 by Sec. 2, Ch. 308, L. 1975.

section 11-1024.2, but was redesignated by the compiler because a section 11-1024.2 had previously been enacted by Sec. 2, Ch. 39, Laws 1975.

**Compiler's Notes**

As enacted this section was designated

**11-1025. Purpose and policy.** (1) It is hereby declared that unsanitary or unsafe privately owned dwelling accommodations exist in urban areas throughout the state and that these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, morals and welfare of the citizens of the state and impair economic values; that in many instances the owners of such accommodations, due to poverty, unavailability of credit and increased costs, are unable to finance the rehabilitation of their dwellings; that the municipal corporations of the state are uniquely able to render financial assistance to these owners of unsafe and unsanitary dwellings and that such assistance is a public use and purpose for which public money may be spent; and that the necessity for the provisions hereinafter enacted is hereby declared as a matter of legislative determination to be in the public interest.

(2) When it has determined that unsanitary or unsafe privately owned dwelling accommodations exist within the limits of the city or town and when it has further determined that the owners of such accommodations are unable under the prevailing market conditions to finance rehabilitation of their dwellings without assistance, the governing body of any municipal corporation may finance the rehabilitation of such unsanitary or unsafe privately owned dwelling accommodations through the use of grants of funds or property, direct loans, loan guarantees, and other means; and may apply for, and accept, advances, loans, grants, contributions and any other form of financial assistance from the federal government, the state, county or other public body, or from any other source, public or private, for the purpose of this section, and may enter into and carry out contracts in connection therewith.

**History:** En. 11-1025 by Sec. 1, Ch. 131, L. 1975.

**Title of Act**

An act authorizing municipal corporations to finance rehabilitation of unsafe or unsanitary privately owned housing.



## CHAPTER 11—ORDINANCES—INITIATIVE AND REFERENDUM

## Section

## 11-1102. Ordinances—how prepared.

**11-1102. (5056) Ordinances — how prepared.** (1) All ordinances, bylaws and resolutions must be passed by the council and approved by the mayor, or the person acting in his stead, and must be recorded in a book kept by the clerk called "The Ordinance Book," and numbered in the order in which they are passed or codified by numerical decimal system.

(2) The governing body of an incorporated city or town may adopt technical building, zoning, health, electrical, fire, and plumbing codes in whole or in part by reference. At least fifteen (15) days prior to final action by a governing body of the city or town, notice of intent to adopt a technical code in whole or in part by reference shall be published in a newspaper of general circulation in the city or town and three (3) copies of the code, or part to be adopted, shall be filed with the clerk of the city or town for inspection by the public.

(3) and (4) \* \* \* [Same as parent volume.]

**History:** En. Sec. 4805, Pol. C. 1895; re-en. Sec. 3265, Rev. C. 1907; re-en. Sec. 5056, R. C. M. 1921; amd. Sec. 1, Ch. 38, L. 1967, amd. Sec. 1, Ch. 231, L. 1969; amd. Sec. 1, Ch. 111, L. 1975.

**Amendments**

The 1969 amendment inserted "fire," before "and plumbing codes" in subsection (2).

The 1975 amendment added "or codified by numerical decimal system" to subsection (1).

**11-1113. (5067) Forms of petitions and conduct of proceedings.****Contents of Petition**

Section 37-101, prescribing form required for referendum petition, was satisfied by petition stating ordinance number, title and date of session of city council at

which ordinance was passed, even though full text of ordinance was not set forth in petition. Tod v. City of Billings, 149 M 462, 430 P 2d 620.

## CHAPTER 12—CONTRACTS AND FRANCHISES

## Section

**11-1202. Awarding contracts—advertisements—limitations—installments—sales of supplies—construction of buildings—purchases from government agencies—exemptions.****11-1202.1. Division of contracts to circumvent bidding procedures prohibited.**

**11-1202. (5070) Awarding contracts—advertisements—limitations—installments—sales of supplies—construction of buildings—purchases from government agencies—exemptions.** All contracts for the purchase of any automobile, truck, or other vehicle or road machinery, or for any other machinery, apparatus, appliances, or equipment, or for any materials or supplies of any kind, or for construction for which must be paid a sum exceeding four thousand dollars (\$4,000), must be let to the lowest responsible bidder after advertisement for bids; provided that no contract shall be let extending over a period of five (5) years or more without first submitting the question to a vote of the taxpaying electors of said city or town. Such advertisement shall be made in the official newspaper of the city or town, if there be such official newspaper, and if not it shall

be made in a daily newspaper of general circulation published in the city or town, if there be such, otherwise by posting in three (3) of the most public places in the city or town. Such advertisement if by publication in a newspaper shall be made once each week for two consecutive weeks and the second publication shall be made not less than five (5) days nor more than twelve (12) days before the consideration of bids. If such advertisement is made by posting, fifteen (15) days must elapse, including the day of posting, between the time of the posting of such advertisement and the day set for considering bids. The council may postpone action as to any such contract until the next regular meeting after bids are received in response to such advertisement, may reject any and all bids and readvertise as herein provided. The provisions of this section as to advertisement for bids shall not apply upon the happening of any emergency caused by fire, flood, explosion, storm, earthquake, riot or insurrection, or any other similar emergency, but in such case the council may proceed in any manner which, in the judgment of three-fourths ( $\frac{3}{4}$ ) of the members of the council present at the meeting, duly recorded in the minutes of the proceedings of the council by aye and nay vote, will best meet the emergency and serve the public interest. Such emergency shall be declared and recorded at length in the minutes of the proceedings of the council at the time the vote thereon is taken and recorded.

When the amount to be paid under any such contract shall exceed four thousand dollars (\$4,000) the council may provide for the payment of such an amount in installments extending over a period of not more than five (5) years; provided that when such amount is extended over a term of two (2) years at least forty per centum (40%) thereof shall be paid the first year and the remainder the second year, and when such amount is extended over a term of three (3) years, at least one-third ( $\frac{1}{3}$ ) thereof shall be paid each year, and if such amount is extended over a term of four (4) years, at least one-fourth ( $\frac{1}{4}$ ) is to be paid each year, and if such amount is extended over a term of five (5) years, at least one-fifth ( $\frac{1}{5}$ ) is to be paid each year; provided that at the time of entering into such contract, there shall be an unexpended balance of appropriation in the budget for the then current fiscal year available and sufficient to meet and take care of such portion of the contract price as is payable during the then current fiscal year, and the budget for each following year, in which any portion of such purchase price is to be paid, shall contain an appropriation for the purpose of paying the same.

Old supplies or equipment may be sold by the city or town to the highest responsible bidder, after calling for bid purchasers as herein set forth for bid sellers, and such city or town may trade in supplies or old equipment on new supplies or equipment at such bid price as will result in the lowest net price.

Also a city or town may, without bid, when there are sufficient funds in the budget for supplies or equipment, purchase such supplies or equipment from government agencies available to cities or towns when the same can be purchased by such city or town at a substantial saving to such city or town.



All necessary contracts for professional, technical, engineering and legal services are excluded from the provisions of this act.

**History:** En. Sec. 1, Ch. 48, L. 1907; Sec. 3278, Rev. C. 1907; re-en. Sec. 5070, R. C. M. 1921; amd. Sec. 1, Ch. 22, L. 1927; amd. Sec. 1, Ch. 18, L. 1939; amd. Sec. 1, Ch. 59, L. 1941; amd. Sec. 1, Ch. 153, L. 1947; amd. Sec. 1, Ch. 139, L. 1949; amd. Sec. 1, Ch. 220, L. 1959; amd. Sec. 1, Ch. 26, L. 1963; amd. Sec. 1, Ch. 121, L. 1969; amd. Sec. 1, Ch. 371, L. 1971.

#### Amendments

The 1969 amendment, in the first paragraph, substituted "for the purchase of any automobile \* \* \* a sum exceeding two thousand five hundred dollars (\$2,500)" for "for work, or for supplies, or for material, or for the construction of any building, for which must be paid a sum exceeding one thousand dollars (\$1,000.00)" and raised the maximum duration of a contract to be let without a vote from three to five years; in the second paragraph, substituted "two thousand five hundred dollars (\$2,500.00)" for "one thousand dollars (\$1,000.00)," inserted "an" before "amount," raised the maximum term of installments from three to five years, and inserted "and if such amount is extended \* \* \* term of five (5) years \* \* \* paid each year;"

The 1971 amendment deleted "of any building" after "construction" in the first sentence of the first paragraph; in-

creased the minimum contract amounts specified in the first and second paragraphs from \$2,500 to \$4,000; and made a minor change in phraseology. The final paragraph of the section was omitted from the 1971 act; however, the Montana supreme court held in *Morrison-Maierle, Inc. v. City of Forsyth*, 160 M 69, 500 P 2d 395, that deletion of that paragraph was not within the title of the 1971 act and that omission thereof was unconstitutional.

#### Installment Contracts

This section expressly authorizes an alternate method of financing construction of municipal buildings to that of borrowing or a bond issue, namely by installment contract. *Greener v. City of Great Falls*, 157 M 376, 485 P 2d 932.

#### Professional Services

Senate Bill 288, Chapter 371, Laws of 1971, which amended this section, title of which was "An act amending section 11-1202, RCM 1947, to increase the monetary limitation on purchases," and eliminated last paragraph of this section excepting from bid requirements contracts for professional, technical, engineering and legal services, without reference thereto in title of bill, was in violation of article IV, section 23, Montana constitution. *Morrison-Maierle, Inc. v. City of Forsyth*, 160 M 69, 500 P 2d 395.

**11-1202.1. Division of contracts to circumvent bidding procedures prohibited.** Whenever any law of this state provides a limitation upon the amount of money that a city or town can expend upon any public work or construction project without letting such public work or construction project to contract under competitive bidding procedures, a city or town shall not circumvent such provision by dividing a public work or construction project or quantum of work to be performed thereunder which by its nature or character is integral to such public work or construction project, or serves to accomplish one of the basic purposes or functions thereof, into several contracts, separate work orders or by any similar device.

**History:** En. Sec. 1, Ch. 183, L. 1971.

#### Title of Act

An act to provide that a city or town shall not circumvent any competitive bidding procedures with respect to the letting

of a contract for a public work or construction project under certain circumstances by dividing a public work or construction project into several contracts, separate work orders or similar devices.

### CHAPTER 13—PRESENTATION AND PAYMENT OF CLAIMS— CITY WARRANTS

#### Section

- 11-1301. Presentation of claims—limitation of actions.
- 11-1302. Allowance and payment of claims—cash basis.
- 11-1307. City warrants—rate of interest.
- 11-1310. Investment of city or town moneys in city or town warrants and approved securities.



**11-1301. (5078) Presentation of claims—limitation of actions.** All accounts and demands against a city or town must be presented to the council duly itemized. All claims against a city or town shall contain the following statement: "I certify that this claim is correct and just in all respects and that payment or credit has not been received." Claims need not be accompanied by affidavit by the party or his agent. These claims must be presented with all necessary and proper vouchers within 1 year from the date the same accrued. Any claim or demand not so presented within this time is forever barred, and the council has no authority to allow any account or demand not so presented. No action may be maintained against the city or town for or on account of any demand or claim against the city or town until such demand or claim has first been presented to the council. In case the total indebtedness of a city or town has reached 11% of the total taxable value of the property of the city or town subject to taxation as ascertained by the last assessment for state and county taxes, the city or town may conduct its affairs and business on a cash basis as provided by 11-1302.

**History:** En. Sec. 4812, Pol. C. 1895; re-en. Sec. 2, Ch. 30, L. 1903; re-en. Sec. 3288, Rev. C. 1907; re-en. Sec. 5078, R. C. M. 1921; amd. Sec. 1, Ch. 55, L. 1957; amd. Sec. 25, Ch. 566, L. 1977.

**Amendments**

The 1977 amendment substituted "11% of the total taxable value" in the seventh sentence for "three per centum (3%) of the total assessed valuation"; and made minor changes in phraseology, punctuation and style.

**11-1302. (5079) Allowance and payment of claims—cash basis.** All accounts and demands against a city or town must be submitted to the council, and if found correct, must be allowed and an order made that the demand be paid, upon which the mayor must draw a warrant upon the treasurer in favor of the owner, specifying for what purpose and by what authority it is issued, and out of what funds it is to be paid, and the treasurer must pay the same out of the proper fund; provided, however, that in case the total indebtedness of a city or town has reached the limit of five per cent (5%) of the value of taxable property therein, it shall be lawful for, and said city or town is hereby authorized and empowered, to thereafter manage and conduct its business affairs on a cash basis and pay the reasonable and necessary current expenses of the city or town out of the cash in the city or town treasury and derived from its current revenues, under such restrictions and regulations as the city or town council may by ordinance prescribe; and in the event that payment be made in advance, the city or town shall have power to require a cash deposit as collateral security and indemnity, equal in amount to such payment, and may hold the same as a special deposit with the city treasurer, in package form, as a pledge for the fulfillment and performance of the contract or obligation for which said advance shall have been made; and provided, further, that before the payment of the current expenses above mentioned, the city or town council shall first set apart sufficient moneys to pay the interest upon its legal, valid, outstanding bonded indebtedness and any sinking funds therein provided for, and shall be authorized to pay all valid claims against funds raised by tax especially authorized by law for the purpose of paying such claims.

**History:** En. Sec. 1, Ch. 30, L. 1903; re-en. Sec. 3287, Rev. C. 1907; re-en. Sec. 5079, R. C. M. 1921; amd. Sec. 2, Ch. 100, L. 1973.

#### **Amendments**

The 1973 amendment substituted "five

per cent (5%) of the value of taxable property therein" for "three per cent provided in section 6 of article XIII of the constitution of the state of Montana" in the first proviso.

### **11-1305, 11-1306. (5080, 5080.1) Repealed.**

#### **Repeal**

Sections 11-1305, 11-1306 (Sec. 1, Ch. 93, L. 1903; Sec. 1, Ch. 132, L. 1929; Sec. 1, Ch. 122, L. 1937), relating to claims for injuries from defective highways and

public works, and nonliability of municipalities for injuries caused by snow or ice on streets or public ways, were repealed by Sec. 9, Ch. 234, Laws 1977.

**11-1307. (5081) City warrants—rate of interest.** When any warrant, drawn upon the treasurer of a city or town, pursuant to any ordinance or resolution or direction of the council of such city or town, is presented to the city or town treasurer for payment, and the same is not paid for want of funds, such treasurer must endorse thereon "Not paid for want of funds," annexing the date of presentation, and sign his name thereto; and from that time until such warrant is called for payment the warrant shall bear interest at a rate fixed by ordinance.

**History:** En. Sec. 1, p. 75, L. 1897; re-en. Sec. 3284, Rev. C. 1907; re-en. Sec. 5081, R. C. M. 1921; amd. Sec. 12, Ch. 234, L. 1971.

#### **Amendments**

The 1971 amendment deleted from the end of the section "and not to exceed six per cent per annum."

**11-1310. Investment of city or town moneys in city or town warrants and approved securities.** (1) Except as provided in subsection (2) of this section, whenever the city or town has under its control any moneys, for which there is no immediate demand, in any fund which, in the judgment of the city or town council, it would be advantageous to invest in city or town warrants, the city or town council is authorized in their discretion to direct the city or town treasurer to purchase legally issued city or town general obligation warrants of the same city or town, thereafter issued against funds in which there is not sufficient funds to pay such city or town warrants at the time of issuance, and in case of such purchase, the city or town council shall designate the fund or funds, to be so invested, and shall fix the amount thereof, and shall also designate the city or town warrant or warrants which are to be purchased by such funds. The city or town clerk shall thereupon cause to be attached to, or stamped, written or printed upon the warrants so ordered to be purchased a notice to the effect that the city or town will exercise its preference right to purchase such warrant. The city or town treasurer shall thereafter, when such city or town warrant is presented to him, purchase the same out of the proper fund as designated by the city or town council, and the warrant so purchased shall be registered as other city or town warrants, and bear interest as provided by law. When the designated amounts have been invested the city or town treasurer shall notify the city or town clerk.

(2) Whenever the city or town has under its control any moneys realized from the sale of bonds, for which there is no immediate demand,

which in the judgment of the city or town council it would be advantageous to invest in any time or savings deposits, United States certificates of indebtedness, United States treasury notes or United States treasury bonds having a maturity date of one (1) year or less, the city or town council is authorized in their discretion to direct the city or town treasurer to make such investments. Interest earned from such investments, including interest on the sale of bonds accrued in the period between the date of issue and the time of purchase, shall be credited to the bond sinking fund of the city or town.

History: En. Sec. 1, Ch. 31, L. 1961; amd. Sec. 1, Ch. 10, L. 1963; amd. Sec. 2, Ch. 268, L. 1969.

#### Amendments

The 1969 amendment substituted "funds"

for "money" before "to pay such city or town warrants" in the first sentence of subsection (1); and inserted "including interest \* \* \* time of purchase" in the last sentence of subsection (2).

### CHAPTER 14—BUDGET SYSTEM FOR CITIES AND TOWNS

#### Section

- 11-1403. Estimates of revenues and disbursements to be filed by officers—forms—penalty for failure to file.
- 11-1404. Tabulation by clerk of expenditure program—classifications, items included in.
- 11-1406. Hearings on budget—adoption—fixing of tax levy.
- 11-1411. Department of community affairs to make rules for carrying out act—accounting systems.
- 11-1414. Deposit in all-purpose fund of revenues from special sources supported.

**11-1403. Estimates of revenues and disbursements to be filed by officers—forms—penalty for failure to file.** (1) Before July 1 of each year the clerk of each city shall notify in writing each official in charge of an office, department, service, or institution of the municipality to file with the clerk, before July 10, detailed and itemized estimates, both of the probable revenues from sources other than taxation, and of all expenditures required by the office, department, service, or institution for the current fiscal year. The council shall submit to the clerk the estimate of expenditures for all purposes for the council. The mayor of the municipality shall submit to the clerk a detailed estimate showing the amount to be appropriated from funds belonging to the municipality to defray the municipality's portion of the cost of making improvements in special improvement districts, and of maintaining them, and of installing lighting systems in special lighting districts, and maintaining them. There may not be included in the estimate, nor in either the preliminary or final budget of a municipality, any part of that cost which is to be paid by special assessments against the property within the districts, or any part of the cost in sprinkling districts which is to be defrayed by special assessments against the property in the sprinkling districts.

(2) The council shall also submit to the clerk detailed estimates of all expenditures for construction or improvement purposes proposed to be made from the proceeds of bond issues not yet authorized and from the proceeds of tax levies which are required to be submitted to and approved at an election to be held.

(3) The estimates required in this section shall be submitted on forms provided by the clerk, and prescribed by the department of community



affairs, and may only be varied or departed from with permission and approval of the department of community affairs. The city treasurer shall prepare the estimates for interest and debt reduction. The clerk shall prepare all other estimates which properly fall within the duties of his office.

(4) Each of the officials shall file the estimates within the time and in the manner provided in the form and notice, and the clerk shall deduct and withhold, as a penalty, from the salary or compensation of each official failing or refusing to file the estimates, the sum of ten dollars (\$10) for each day of delay. The total penalty against an official may not exceed fifty dollars (\$50) per year. In the absence or disability of an official the duties required in this section devolve upon the official or employee in charge of the office, department, service, or institution for the time being. The notice shall contain a copy of this penalty clause.

History: En. Sec. 3, Ch. 121, L. 1931; in subsection (3) for references to the  
amd. Sec. 49, Ch. 348, L. 1974; amd. Sec. state examiner; and made minor changes  
12, Ch. 213, L. 1975. in phraseology.

#### Amendments

The 1974 amendment substituted "de-  
partment of intergovernmental relations" in subsection (3).  
The 1975 amendment substituted "de-  
partment of community affairs" for "de-  
partment of intergovernmental relations"

**11-1404. Tabulation by clerk of expenditure program—classifications, items included in.** (1) From estimates of revenue and disbursements the clerk shall prepare a tabulation showing the complete expenditure program of the municipality for the current fiscal year, and the sources of revenue by which it is to be financed. The tabulation shall set forth the estimated receipts from all sources other than taxation for each office, department, service, or institution for the current fiscal year, the actual receipts for the last completed fiscal year, the surplus or unencumbered treasury balances at the close of that last fiscal year, and the amount necessary to be raised by taxation; the estimated expenditure for each office, department, service, or institution for the current fiscal year, the actual expenditures for the last completed fiscal year, and all contracts or other obligations which will affect the current year revenues.

(2) The estimates, appropriations, and expenditures shall be classified as:

- (a) salaries and wages;
- (b) maintenance and operation;
- (c) capital outlay;
- (d) interest and debt redemption;
- (e) miscellaneous; and
- (f) expenditures proposed to be made from bond issues not yet authorized, or from the proceeds of a tax levy or levies which are required to be submitted to and approved at an election to be held later.

(3) Within the class of "salaries and wages" each salary shall be set forth separately together with the title or position of the recipient. An unitemized appropriation may be made to cover the expenses of special deputies or assistants in an office where the services of the special deputies or assistants may be required during a part of the fiscal year only. Wages

for day labor may be given in totals by designating the general purpose or object for which the expenditure is to be made but the proposed rate per day for each class or kind of labor shall be set forth. Expenditures under the general class of "maintenance and operation" shall be classified according to a standard classification to be established by the department of community affairs. Expenditures for "capital outlay" shall set forth and describe each object of expenditure separately. Under the general class of "interest and debt redemption" proposed expenditures for interest and for redemption of principal shall be set forth separately for each series or issue of bonds, and warrant interest and redemption requirements shall be set forth in a similar manner. Under the general class of "miscellaneous" expenditures for all purposes not listed in, or which cannot properly be assigned to any of the general classes, shall be set forth and itemized in detail.

(4) The total amount of emergency warrants issued during the preceding fiscal year shall be set forth with the amount issued for each emergency and the amount issued against each fund.

History: En. Sec. 4, Ch. 121, L. 1931; amd. Sec. 50, Ch. 348, L. 1974; amd. Sec. 13, Ch. 213, L. 1975.

in subsection (3) for "state examiner"; and made minor changes in style, punctuation and phraseology.

#### Amendments

The 1974 amendment substituted "department of intergovernmental relations"

The 1975 amendment substituted "department of community affairs" for "department of intergovernmental relations" in subsection (3).

**11-1406. Hearings on budget—adoption—fixing of tax levy.** (1) On the Wednesday preceding the second Monday in August the council shall meet at the time and place designated in the notice provided in section 11-1405, at which time any taxpayer may appear and be heard for or against any part of the budget. The hearing shall be continued from day to day and shall be concluded and the budget finally approved and adopted on the second Monday in August and prior to the fixing of the tax levies by the council. The council may call in the official in charge of an office, department, service, or institution, at the time the estimates for their respective offices are under consideration, for examination concerning the estimates. The official shall be called in by the council upon the request of a taxpayer for questioning either by the council or a taxpayer upon the estimates.

(2) Upon the conclusion of the hearing the council shall first determine the amount estimated to accrue to each fund during the fiscal year from all sources, except the taxation of property. In so doing the council may not include any amount anticipated from the payment of taxes which became delinquent during a preceding fiscal year. The council shall then determine separately the amount appropriated for and authorized to be spent for each item in the budget and shall specify the fund against which warrants are to be drawn for the expenditures so authorized. There may not be added to the amount appropriated and authorized to be spent for an item or purpose, or to the total amount appropriated and authorized to be spent from any fund, other than a fund for the payment of principal or interest on outstanding bonds, any amount because of anticipated loss



of revenue by reason of nonpayment of taxes levied for the fiscal year. The expenditures authorized from a fund, including reserve, may not exceed the aggregate of:

(a) the cash balance in the fund at the close of the preceding fiscal year in excess of outstanding unpaid warrants against the fund at the close of that fiscal year.

(b) the amount of estimated revenues to accrue to the fund; and

(c) the amount which may be raised for the fund by a lawful tax levy during the fiscal year.

(3) The council shall then determine the amount to be raised for each fund, for which a tax levy is to be made, by adding the cash balance in excess of outstanding unpaid warrants at the close of the preceding fiscal year and the amount of the estimated revenues, if any, to accrue to the fund during the current fiscal year. It shall then deduct the total amount so obtained from the total amount of the appropriations and authorized expenditures from the fund as determined by the council in the budget adopted and approved. The amount remaining is the amount necessary to be raised for any fund by tax levy during the current fiscal year. The council may add to the amount necessary to be raised for any fund by tax levy during the current fiscal year an additional amount, as a reserve to meet expenditures to be made from the fund during the months of July to November, of the next fiscal year. The amount added to any fund as a reserve may not exceed one-third ( $1/3$ ) of the total amount appropriated and authorized to be spent from the fund during the current fiscal year, after deducting from the amount of the appropriations and authorized expenditures the total amount appropriated and authorized to be spent for election expenses and payment of emergency and other outstanding warrants. The total amount to be raised by tax levy for any fund during the current fiscal year, including the amount of the reserve, must not exceed the total amount which may be raised for the fund by a tax levy which does not exceed the maximum levy permitted by law to be made for the fund.

(4) The budget as finally determined, in addition to setting out separately each item for which an appropriation is made or expenditure authorized, and the fund out of which it is to be paid, shall set out the total amount appropriated and authorized to be spent from each fund, the cash balance, in excess of outstanding unpaid warrants, at the close of the preceding fiscal year, the amount estimated to accrue to the fund from sources other than taxation, the reserve for the next fiscal year, and the amount necessary to be raised for each fund by tax levy during the current fiscal year. The council shall then by resolution approve and adopt the budget as finally determined, and the clerk shall enter it at length in the official minutes of the council.

(5) On the second Monday in August, and after the approval and adoption of the final budget, the council shall fix the tax levy for each fund at a rate, not exceeding limits prescribed by law, which will raise the amount set out in the budget as the amount necessary to be raised by tax levy for that fund during the current fiscal year. The taxable valua-



tion of the city for the current fiscal year shall be the basis for determining the amount of the tax levy for each fund, and each tax levy shall be at a rate no higher than is required on that basis, without including any amount for anticipated tax delinquency, to raise the amount set out in the budget. Each levy shall be made in the manner provided by section 84-3802. If the council considers that a levy made for a bond sinking or interest fund will not provide a sufficient amount to pay all bond and interest becoming due during the current fiscal year, or within six (6) months after the current fiscal year, because of anticipated tax delinquency, the council may fix the levy at a rate it considers necessary to raise the amount for making the payments of principal and interest, over and above the anticipated tax delinquency.

(6) The city clerk shall, not later than September 15, forward a complete copy of the final budget, together with the tax levies, to the department of community affairs. If a city clerk fails to forward the copy of the budget to the department of community affairs within the time required, the department of community affairs shall, before October 1, notify the mayor and council of the city that a copy of the budget has not been forwarded by the city clerk. The council must then withhold from the city clerk his salary or compensation for the month of September until the city clerk presents the council with a notice from the department of community affairs that the copy of the budget has been received.

**History:** En. Sec. 6, Ch. 121, L. 1931; amd. Sec. 1, Ch. 129, L. 1941; amd. Sec. 51, Ch. 348, L. 1974; amd. Sec. 14, Ch. 213, L. 1975.

#### **Amendments**

The 1974 amendment substituted "department of intergovernmental relations"

throughout subsection (6) for "state examiner"; and made numerous changes in style, punctuation and phraseology.

The 1975 amendment substituted "department of community affairs" for "department of intergovernmental relations" throughout subsection (6).

**11-1411. (5083.10) Department of community affairs to make rules for carrying out act—accounting systems.** The department of community affairs shall make rules and classifications, and prescribe forms, necessary to carry out the provisions of this act. It shall define what expenditures are chargeable to each budget account, and shall establish accounting and cost systems necessary to provide accurate budget information.

**History:** En. Sec. 10, Ch. 121, L. 1931; amd. Sec. 52, Ch. 348, L. 1974; amd. Sec. 15, Ch. 213, L. 1975.

partment of intergovernmental relations" for "state examiner"; and made minor changes in punctuation and phraseology.

The 1975 amendment substituted "department of community affairs" for "department of intergovernmental relations."

#### **Amendments**

The 1974 amendment substituted "de-

**11-1414. Deposit in all-purpose fund of revenues from special sources supported.** Cities and towns making the all-purpose annual mill levy shall deposit into the all-purpose general fund all money received from other sources, including fees, charges and fines received from the operation of airports, libraries, swimming pools, parking lots, golf courses and any other operation supported in part or whole from an appropriation of the all-purpose levy, and not otherwise provided by law.

**History:** En. Sec. 1, Ch. 131, L. 1973.

**Title of Act**

An act requiring cities and towns making the all-purpose levy to deposit money

received from other sources in the all-purpose general fund and requiring that the provisions of the all-purpose levy statutes be construed in conjunction with the Municipal Budget Law.

## CHAPTER 16—JUDICIAL POWERS—CITY COURTS

### Section

11-1601. City court established.

11-1601.1. Election and terms of office of city judges.

11-1602. Concurrent jurisdiction.

11-1603. Exclusive jurisdiction.

11-1603.1. Who named as plaintiff.

11-1604. When substitute for judge called in.

**11-1601. (5087) City court established.** A city court is established in each city or town. On judicial days, the court shall be open for all business, civil and criminal. On nonjudicial days as defined in 93-507, the court may transact criminal business only.

**History:** En. Sec. 4910, Pol. C. 1895; re-en. Sec. 3296, Rev. C. 1907; re-en. Sec. 5087, R. C. M. 1921; amd. Sec. 1, Ch. 165, L. 1975; amd. Sec. 2, Ch. 344, L. 1977.

The 1977 amendment substituted the last two sentences for "which court must always be open, except upon nonjudicial days, and upon such days it may transact criminal business only."

### Amendments

The 1975 amendment substituted "city court" for "police court."

**11-1601.1. Election and terms of office of city judges.** The election of city judges and their terms of office are provided for in Title 11, chapter 7.

**History:** En. 11-1601.1 by Sec. 3, Ch. 344, L. 1977.

### Title of Act

An act to generally revise and clarify the laws relating to the judiciary and the courts of the state of Montana.

**11-1602. (5088) Concurrent jurisdiction.** (1) The city court has concurrent jurisdiction with the justice's court of all misdemeanors punishable by a fine not exceeding \$500 or by imprisonment not exceeding 6 months or by both fine and imprisonment.

(2) Applications for search warrants and complaints charging the commission of a felony may be filed in the city court. When they are filed, the city judge has the same jurisdiction and responsibility as a justice of the peace, including the holding of a preliminary hearing. The city attorney may file an application for a search warrant or a complaint charging the commission of a felony when the offense was committed within the city limits. The county attorney, however, must handle any action after a defendant is bound over to district court.

**History:** En. Sec. 4911, Pol. C. 1895; amd. Sec. 1, Ch. 16, L. 1903; re-en. Sec. 3297, Rev. C. 1907; re-en. Sec. 5088, R. C. M. 1921; amd. Sec. 1, Ch. 93, L. 1967; amd. Sec. 10, Ch. 240, L. 1971; amd. Sec. 11, Ch. 94, L. 1973; amd. Sec. 4, Ch. 274, L. 1974; amd. Sec. 2, Ch. 165, L. 1975; amd. Sec. 4, Ch. 344, L. 1977. Cal. Pol. C. Sec. 4426.

### Amendments

The 1971 amendment reduced the age specified in subdivision 5 from 21 to 19 years.

The 1973 amendment reduced the age specified in subdivision (5) from nineteen to eighteen years; and made minor changes in style.

The 1974 amendment substituted the present subdivision (1) for one reading

"Petit larceny"; substituted "as otherwise provided by law" in the final sentence for "as provided in the next section"; and made minor changes in style.

The 1975 amendment completely rewrote the former section, which enumerated the public offenses within the jurisdiction of the police courts. For prior versions, see parent volume and 1971, 1973 and 1974 amendment notes.

The 1977 amendment designated the former preliminary paragraph as subsection (1); deleted former subdivisions (1) and (2) reading "(1) Any action charging the commission of an offense within the city

or town limits in violation of a city or town ordinance shall be brought in the name of the city or town as the plaintiff and against the accused as the defendant.

(2) Any other action brought for violation of a state law within the city shall be brought in the name of the state of Montana as the plaintiff and against the accused as the defendant"; redesignated former subdivision (3) as subsection (2); deleted "or town" before "court" at the end of the first sentence of subsection (2); and made minor changes in phraseology, punctuation and style.

#### DECISIONS UNDER FORMER LAW

##### Search Warrants

Police magistrates have never been given authority by the legislature to issue search warrants, and therefore a search

warrant issued by such magistrate must be void. *State v. Tropf*, — M —, 530 P 2d 1158.

**11-1603. (5089) Exclusive jurisdiction.** The city court has exclusive jurisdiction of:

(1) proceedings for the violation of an ordinance of the city or town, both civil and criminal;

(2) when the amount of the taxes or assessments sought does not exceed \$300, actions for the collection of taxes or assessments levied for any of the following purposes, except that no lien on the property taxed or assessed for the nonpayment of the taxes or assessment may be foreclosed in any such action:

- (a) city or town purposes;
- (b) the erection or improvement of public buildings;
- (c) the laying out, opening, or improving of a public street, sidewalk, alley, or bridge;
- (d) the acquisition or improvement of any public grounds; and
- (e) public improvements made or ordered by the city or town within its limits;

(3) actions for the collection of money due to the city or town or from the city or town to any person, when the amount sought, exclusive of interest and costs, does not exceed \$300;

(4) when the amount claimed, exclusive of costs, does not exceed \$300, actions for:

- (a) the breach of an official bond given by a city or town officer;
- (b) the breach of any contract;
- (c) damages, when the city or town is a party or is in any way interested;

(d) the enforcement of forfeited recognizances given to, for the benefit of, or on behalf of the city or town; and

(e) collection on bonds given upon an appeal taken from the judgment of the court in any action mentioned in subsections (4)(a) through (4)(d);

(5) actions for the recovery of personal property belonging to the city or town, when the value of the property, exclusive of the damages for the taking or detention, does not exceed \$300; and



(6) actions for the collection of a license fee required by an ordinance of the city or town.

**History:** En. Sec. 4912, Pol. C. 1895; re-en. Sec. 3298, Rev. C. 1907; re-en. Sec. 5089, R. C. M. 1921; amd. Sec. 5, Ch. 344, L. 1977. Cal. Pol. C. Sec. 4427.

#### Amendments

The 1977 amendment substituted "city court" for "police court" in the introductory phrase; deleted "which must be prosecuted in the name of the city or town" from the end of subdivision (1); substituted the subdivision (2) for the former subdivision 2 as set out in the parent volume; deleted "to be collected" after "amount sought" in subdivision (3); divided former subdivision 4 into clauses (a) through (e); designated the last clause of former subdivision 4 as the opening clause of subdivision (4); substituted "the enforcement of" for "all" in subdivision (4)(d); substituted "collection on" for "upon all" in subdivision (4)(e);

substituted "mentioned in subsections (4) (a) through (4)(d)" for "above named" in subdivision (4)(e); inserted "fee" in subdivision (6); and made minor changes in phraseology, punctuation and style.

#### Exclusive Jurisdiction

Where there was alleged violation of city ordinance but same was not violation of state law, police court in city had exclusive jurisdiction over matter. State ex rel. Goodwin v. District Court, — M —, 536 P 2d 766.

#### Penalty Assessment on Fines

Statute providing for penalty assessments in addition to fines was void for indirectly enlarging jurisdiction of justice and police courts in terms of maximum fine which might be imposed. State ex rel. Sanders v. City of Butte, 151 M 171, 441 P 2d 190.

**11-1603.1. Who named as plaintiff.** (1) An action brought for violation of a city or town ordinance shall be brought in the name of the city or town as the plaintiff and against the accused as the defendant.

(2) An action brought for violation of a state law within the city or town shall be brought in the name of the state of Montana as the plaintiff and against the accused as the defendant.

**History:** En. 11-1603.1 by Sec. 6, Ch. 344, L. 1977.

**11-1604. (5090) When substitute for judge called in.** The city judge or mayor may call in a justice of the peace or some qualified resident of the city or town to act in the judge's place, whenever the judge is:

- (1) a party in a case;
- (2) interested in a case;
- (3) related to either party in a case by consanguinity or affinity within the sixth degree; or
- (4) sick, absent, or unable to act.

**History:** En. Sec. 4913, Pol. C. 1895; re-en. Sec. 3299, Rev. C. 1907; re-en. Sec. 5090, R. C. M. 1921; amd. Sec. 2, Ch. 420, L. 1975; amd. Sec. 7, Ch. 344, L. 1977. Cal. Pol. C. Sec. 4428.

#### Amendments

The 1975 amendment substituted "or some qualified resident of the city or town" for "residing in the city or town" near the end of the section.

The 1977 amendment rewrote this section which read "In all cases in which the

judge is a party, or in which he is interested, or when he is related to either party by consanguinity or affinity within the sixth degree, and in case of his sickness, absence, or inability to act, the police judge or mayor may call in a justice of the peace, or some qualified resident of the city or town, to act in his place and stead."

#### Cross-References

Compensation of justice of the peace acting as police judge, sec. 11-727.

## CHAPTER 17—MUNICIPAL COURTS

## Section

- 11-1701. Establishment of municipal court.
- 11-1703. Election of judges—term of office.
- 11-1704. Qualifications and salary.
- 11-1704.1. Restrictions on municipal court judges.
- 11-1705. Courtroom and supplies.
- 11-1708. Sessions of the court.
- 11-1710. Summons—time for answer.
- 11-1711. Applicability of rules for justices' courts—reply to counterclaim or new matter.
- 11-1717. Appeals.
- 11-1718. Fees and fines.

**11-1701. (5094.1) Establishment of municipal court.** (1) All cities in the state of Montana with a population of 10,000 or more, according to the last federal census, may have a court known as the municipal court of the city of (designating the name of the city) of the state of Montana. The court shall be a court of record.

(2) The provisions of this chapter apply only after the governing body of the city has elected by a two-thirds majority vote to adopt them by ordinance and, in the ordinance, has provided the manner in which and time when the municipal court is to be established and shall assume continuing jurisdiction over all pending city court cases. The ordinance must be consistent with the provisions of this chapter.

**History:** En. Sec. 1, Ch. 177, L. 1935; amd. Sec. 1, Ch. 429, L. 1977.

**Amendments**

The 1977 amendment inserted the subsection designations; substituted "population of 10,000" in the first sentence of

subsection (1) for "population of twenty thousand (20,000)"; added "and shall assume continuing jurisdiction over all pending city court cases" at the end of the first sentence of subsection (2); and made minor changes in phraseology, punctuation and style.

**11-1703. (5094.3) Election of judges—term of office.** (1) One judge of each municipal court shall be elected at the general city election. The judge's term shall commence on the first Monday in May following the election. The judge shall hold office for the term of 4 years and until his successor is elected and qualified.

(2) All elections of municipal judges are governed by the laws applicable to the election of city officials, except that the name of a candidate for municipal judge shall be placed on the ballot without any party designation or any statement, measure, or principle which the candidate advocates or any slogan after his name.

**History:** En. Sec. 3, Ch. 177, L. 1935; amd. Sec. 2, Ch. 429, L. 1977.

**Amendments**

The 1977 amendment inserted the sub-

section designations; increased the term of city judges from two years to four years; and made minor changes in phraseology, punctuation and style. For prior version, see parent volume.

**11-1704. (5094.4) Qualifications and salary.** (1) A municipal court judge must have the same qualifications as a judge of a district court, as set forth in Article VII, section 9, of the 1972 Montana constitution, except that a municipal court judge need only be admitted to the practice of law in Montana for at least 2 years prior to the date of appointment or election.

A municipal court judge must be a resident and voter in the city in which he is elected at the time of his election.

(2) The salary of the municipal court judge shall be set by city ordinance and shall be payable monthly by the city treasurer.

**History:** En. Sec. 4, Ch. 177, L. 1935; amd. Sec. 1, Ch. 124, L. 1974; amd. Sec. 3, Ch. 429, L. 1977.

#### Amendments

The 1974 amendment substituted "set by city ordinance and" in the second sentence for "three thousand (\$3,000.00) dollars annually."

The 1977 amendment divided the former first sentence into two sentences; added "as set forth in Article VII \* \* \* appointment or election" to the first sentence; designated the former second sentence as subsection (2); and made minor changes in phraseology.

**11-1704.1. Restrictions on municipal court judges.** No municipal court judge may practice law or hold office in a political party during his term of office.

**History:** En. 11-1704.1 by Sec. 4, Ch. 429, L. 1977.

#### Title of Act

An act to generally revise and clarify the laws relating to municipal courts; to change the population requirement for cities adopting municipal courts from 20,000 to 10,000; to provide that municipal court judges be elected every four years; to provide qualifications for and restric-

tions on municipal court judges; to provide that the city provide the facilities for the court; to prescribe the sessions of the court; and to prescribe the amount and disposition of fines in the court; amending sections 11-1701, 11-1703, 11-1704, 11-1705, 11-1708, 11-1710, 11-1711, 11-1717, 11-1718, and 93-102, R. C. M. 1947; repealing section 11-1709, R. C. M. 1947; and providing an immediate effective date.

**11-1705. (5094.5) Courtroom and supplies.** A room for the municipal court, with necessary furniture, fixtures, and supplies, shall be provided by the city wherein the court is located.

**History:** En. Sec. 5, Ch. 177, L. 1935; amd. Sec. 5, Ch. 429, L. 1977.

#### Amendments

The 1977 amendment substituted "city

wherein the court is located" at the end of the section for "county wherein said city is located"; and made minor changes in phraseology and punctuation.

**11-1708. (5094.8) Sessions of the court.** The municipal court shall be in continuous session from 9 a.m. to 12 noon and from 1 p.m. to 4 p.m. on every day except nonjudicial days. The judge may designate additional hours as he, in his discretion, sees fit.

**History:** En. Sec. 8, Ch. 177, L. 1935; amd. Sec. 6, Ch. 429, L. 1977.

#### Amendments

The 1977 amendment substituted "9 a.m. to 12 noon and from 1 p.m. to 4 p.m." in the first sentence for "10:00 o'clock a.m. to 4:00 o'clock p.m."; substituted "every day except nonjudicial days" at the end

of the first sentence for "every judicial day"; substituted the last sentence for "or such other hours as the judge thereof may designate, except that during a time when the district court of the county in which said municipal court is located is in session, the municipal judge may in his discretion suspend court"; and made a minor change in phraseology.

**11-1709. (5094.9) Repealed.**

#### Repeal

Section 11-1709 (Sec. 9, Ch. 177, L. 1935), relating to the commencement of

actions, was repealed by Sec. 60, Ch. 344, Laws 1977 and by Sec. 12, Ch. 429, Laws 1977.



**11-1710. (5094.10) Summons—time for answer.** The summons in municipal court shall be signed by the clerk and shall conform to the provisions of M.R.Civ.P., Rules 4 and 12(a), except that the time for answering is 10 days.

**History:** En. Sec. 10, Ch. 177, L. 1935; amd. Sec. 8, Ch. 344, L. 1977; amd. Sec. 7, Ch. 429, L. 1977.

#### Amendments

Chapter 344, Laws of 1977, substituted "M.R.Civ.P., Rules 4 and 12(a)" near the middle of the section for "section 93-3003"; and made minor changes in phraseology and style.

Chapter 429, Laws of 1977, deleted "as near as may be" after "conform" in the middle of the section; substituted "M.R. Civ.P., Rules 4 and 12(a)" near the middle of the section for "section 93-3003"; and made minor changes in phraseology and style.

#### Compiler's Notes

This section was amended twice in 1977, once by Ch. 344 and once by Ch. 429. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

**11-1711. (5094.11) Applicability of rules for justices' courts—reply to counterclaim or new matter.** (1) The provisions of 93-6901 through 93-7405 and 93-7701 through 93-7714 are applicable to municipal courts, except when they are inconsistent with the provisions of this chapter, the words "municipal court" being substituted for justice court and "judge" for justice of the peace.

(2) Whenever the answer contains a counterclaim or any new matter, the plaintiff shall within 5 days after the service and filing of the answer reply to the counterclaim or new matter in the manner and form provided for in M.R.Civ.P., Rules 7(a), 8(e)(2), and 10(b).

**History:** En. Sec. 11, Ch. 177, L. 1935; amd. Sec. 9, Ch. 344, L. 1977; amd. Sec. 8, Ch. 429, L. 1977.

(2), and 10(b)" at the end of the section for "section 93-3601"; and made minor changes in phraseology, punctuation and style.

#### Compiler's Notes

This section was amended twice in 1977, once by Ch. 344 and once by Ch. 429. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Chapter 429, Laws of 1977, inserted the subsection designations; deleted "practice and procedure in" before "municipal courts" near the middle of subsection (1); substituted "chapter" for "act" near the middle of subsection (1); deleted "if he does not demur" after "the plaintiff" near the middle of subsection (2); substituted "M.R.Civ.P., Rules 7(a), 8(e)(2) and 10(b)" at the end of subsection (2) for "section 93-3601"; and made minor changes in phraseology, punctuation and style.

#### Amendments

Chapter 344, Laws of 1977, deleted "if he does not demur" after "the plaintiff" near the middle of the second sentence; substituted "M.R.Civ.P., Rules 7(a), 8(e)

**11-1717. (5094.17) Appeals.** (1) A party may appeal to district court from a judgment of municipal court.

(2) Appeal from a municipal court may be limited by requiring by ordinance that a minimum amount in controversy, not to exceed \$200, be met before the district court has jurisdiction to hear the appeal, except:

(a) if the judgment of the municipal court includes incarceration no minimum amount in controversy may be required for appeal; and

(b) upon petition by an aggrieved party the district court may, in the interests of justice, accept appeal jurisdiction notwithstanding the amount in controversy.

(3) The municipal court shall establish rules for appeal to district court. The rules are subject to the supreme court's rule-making and supervisory authority.

**History:** En. Sec. 17, Ch. 177, L. 1935; amd. Sec. 9, Ch. 429, L. 1977.

#### Amendments

The 1977 amendment substituted the authorization to limit appeals from the municipal court by ordinance and guide-

lines for such limitations for the former provisions allowing appeals from municipal courts as from justice courts or police courts with restrictions where the amount in controversy was less than one hundred dollars. For prior version, see parent volume.

**11-1718. (5094.18) Fees and fines.** The fees and fines in municipal court shall be the same as the fees and fines provided by law or ordinance, and all fees and fines collected by the court shall be paid into the city treasury.

**History:** En. Sec. 18, Ch. 177, L. 1935; amd. Sec. 10, Ch. 429, L. 1977.

#### Amendments

The 1977 amendment inserted "and

fines" throughout the section; substituted "provided by law or ordinance" for "provided by law for justice court"; and made a minor change in phraseology.

### CHAPTER 18—POLICE DEPARTMENT, METROPOLITAN POLICE LAW

#### Section

- 11-1803. Terms of members of police force.
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**11-1803. (5097) Terms of members of police force.** All appointments to the police force must be appointed by the mayor or in those cities operating under the commission-manager plan, the manager thereof, and confirmed by the city council or commission, but no such appointment must be made, until an application for such position on the police force has been filed with the mayor or in those cities operating under the commission-manager plan, the manager thereof, and by him referred to the police commission, where such commission exists, and such applicant has successfully passed the examination required to be held by such police commission, and a certificate from such police commission that the applicant has qualified for such appointment has been filed with the mayor or in those cities operating under the commission-manager plan, the manager thereof. Every applicant who has passed such examination and received such certificate must first serve for a probationary term of not more than one (1) year. At any time before the end of such probationary term, the mayor or in those cities operating under the commission-manager plan, the manager thereof, may revoke such appointment. After the end of such probationary period, and within thirty days thereafter, the appointment of such applicant must be submitted to the city council or commission, and if such



appointment is confirmed by the city council or commission, such applicant becomes a member of the police force, and shall hold such position during good behavior, unless suspended or discharged as provided by law.

**History:** En. Sec. 3, Ch. 136, L. 1907; Sec. 3306, Rev. C. 1907; amd. Sec. 1, Ch. 198, L. 1921; re-en. Sec. 5097, R. C. M. 1921; amd. Sec. 2, Ch. 119, L. 1923; amd. Sec. 3, Ch. 152, L. 1947; amd. Sec. 1, Ch. 160, L. 1973.

#### Amendments

The 1973 amendment extended the maximum probationary term provided for by the second sentence from six months to one year.

#### Dismissal During Probationary Period

Where city ordinance provided that newly hired police officers must serve a

probationary period of up to six months during which time they might be summarily dismissed by the mayor, dismissal of plaintiff after five months on the basis of his "performance of duty, attitude toward and lack of desire to co-operate with those in charge," and police commission's refusal to give him a hearing on the charges against him, did not violate the fourteenth amendment due process clause since dismissal from one's job during the probationary period is not a deprivation of liberty or property within the meaning of the clause. *Schend v. Thorson*, — M —, 549 P 2d 809.

**11-1804. (5098) Police commission required in all cities and some towns.** In all cities and some towns the mayor or, in those cities operating under the commission-manager plan, the manager thereof, shall nominate, and with the consent of the city council or commission appoint three residents of such city or town, who shall have the qualifications required by law to hold a municipal office therein, and who shall constitute a board to be known by the name of "police commission" who shall hold office for three years and that one such member must be appointed annually, at the first regular meeting of the city council or commission in May of each year. Provided, that at the first meeting of the council or commission in the month of May after the passage of this act, the mayor or in those cities operating under the commission-manager plan, the manager thereof, subject to the approval of the council or commission, shall appoint three members of such police commission, one to serve for one year, one for two years and one for three years from the date of their appointment and confirmation.

The compensation of the members of such board shall be fixed by the city council or commission not to exceed ten dollars (\$10) per day, nor more than fifty dollars (\$50) per month for any month for each member in cities of the first and second class.

This act shall apply to organized police departments in every city and town of the state of Montana which have three (3) or more full-time law enforcement officials regardless of the form of government under which said city or town may be operating or may at any time adopt.

**History:** En. Sec. 4, Ch. 136, L. 1907; Sec. 3307, Rev. C. 1907; re-en. Sec. 5098, R. C. M. 1921; amd. Sec. 1, Ch. 119, L. 1923; amd. Sec. 1, Ch. 96, L. 1939; amd. Secs. 4, 5, Ch. 152, L. 1947; amd. Sec. 1, Ch. 194, L. 1975.

#### Amendments

The 1975 amendment substituted "In all cities and some towns" for "In cities of the first and second class" at the beginning of the section; deleted from the third

paragraph a sentence authorizing establishment by ordinance of a police commission in smaller cities and towns; inserted "which have three (3) or more full-time law enforcement officials" in the third paragraph; and made minor changes in style and punctuation.

#### Repealing Clause

Section 2, Ch. 194, Laws 1975 read "Section 11-1804.1, R. C. M. 1947, is repealed."

**11-1804.1. Repealed.****Repeal**

Section 11-1804.1 (Sec. 1, Ch. 199, L. 1959), relating to police commissions and

discharge of policemen in third class cities, was repealed by Sec. 2, Ch. 194, Laws 1975.

**11-1806. (5100) Presentation and trial of charges against policemen.****Dismissal During Probationary Period**

Where city ordinance provided that newly hired police officers must serve a probationary period of up to six months during which time they might be summarily dismissed by the mayor, dismissal of plaintiff after five months on the basis of his "performance of duty, attitude toward and lack of desire to co-operate with those in charge," and police commission's refusal to give him a hearing on the charges against him, did not violate the fourteenth amendment due process clause, since dismissal from one's job during the probationary period is not a deprivation of liberty nor property within the meaning of the clause. *Schend v. Thorson*, — M —, 549 P 2d 809.

**Review of Decision**

Decision of police commission is subject to judicial review, but there is no right to jury trial or hearing de novo. *City of Helena v. District Court of First Judicial District*, — M —, 530 P 2d 464.

**Summary Proceeding**

Policeman charged with several acts of misconduct and subject to proceedings under subsection (1) could not also be suspended under subsection (10) on the basis of the same charges; the procedures outlined in subsections (1) through (9) and the summary proceeding under subsection (10) are mutually exclusive, the former being intended to deal with serious charges which, if proven, could lead to the officer's dismissal, and the latter being intended to deal with minor disciplinary problems capable of being handled within

the department. *Miskovich v. City of Helena*, — M —, 551 P 2d 995.

**Trial**

Where policeman had been improperly dismissed, but reinstated, then charged with misconduct, dishonesty and failure to obey a superior's lawful order, found guilty at a hearing as provided for by this section and then dismissed again, the first dismissal did not so taint the subsequent proceedings as to render them mere ex post facto attempts to provide due process and justify the discharge; the error of the improper dismissal was completely cured by the reinstatement. *Steer v. City of Missoula*, — M —, 547 P 2d 843.

Police commission has the power under this section to compel the testimony of reluctant witnesses, subject to the same restrictions as those imposed upon a district court in the trial of like cases. *Matter of Dewar*, — M —, 548 P 2d 149.

Whether the witness who told a police investigator that petitioner was "rumored" to have stolen two bicycles from the police storage garage ought to be ordered identified in a proceeding before the police commissioner was dependent upon the circumstances of the case and called for a balancing of various factors including the nature of the crime charged, possible defenses, the significance of the informer's testimony, the necessity to protect the flow of information, and the impact of nondisclosure on the accused's right to present a defense. *Matter of Dewar*, — M —, 548 P 2d 149.

**11-1809. Rights upon reinstatement.****Compiler's Notes**

Section 3, Ch. 489, Laws 1977, and Sec.

6, Ch. 85, Laws 1977, substituted "retired list" in this section for "reserve list."

**11-1814. Qualifications of policemen.** The members of a police department of any city, at the time of their appointment under this act, shall not be less than twenty (20) years of age nor more than forty (40) years of age.

A police officer must be a citizen of the United States, and meet the minimum qualifying standards for employment promulgated by the board of crime control.

History: En. Sec. 12, Ch. 136, L. 1907; Sec. 3315, Rev. C. 1907; re-en. Sec. 5106, R. C. M. 1921; amd. Sec. 6, Ch. 119, L. 1923; amd. Sec. 1, Ch. 29, L. 1959; amd. Sec.

1, Ch. 47, L. 1971; amd. Sec. 1, Ch. 66, L. 1971; amd. Sec. 1, Ch. 56, L. 1973; amd. Sec. 1, Ch. 60, L. 1973; amd. Sec. 12, Ch. 335, L. 1974.



**Amendments**

Chapter 47, Laws of 1971, reduced the minimum appointment age for policemen from twenty-one to twenty years.

Chapter 66, Laws of 1971, added to the second paragraph a proviso permitting the police commission to waive residency requirements.

Chapter 56, Laws of 1973, deleted from the second paragraph provisions that a police officer "must have resided in the state of Montana at least two years, and have been a resident of the city or town in which he is appointed at least six (6) months prior to such appointment, such qualifications also to apply to every officer on the eligible list, at the time he shall be transferred to the active list"; deleted the proviso added to the second paragraph by chapter 66, Laws of 1971; and made minor changes in style.

Chapter 60, Laws of 1973, repeated the changes made in the second paragraph by

Chapter 56; added "and meet the minimum qualifying standards for employment promulgated by the board of crime control" at the end of the second paragraph; and deleted a third paragraph reading: "Every police officer must be able to speak and write understandingly the English language."

The 1974 amendment deleted from the end of the first sentence a proviso reading "provided, however, that any city council shall have the power by ordinances duly passed and approved to retire any police officer on half pay, who shall have arrived at the age of sixty-five (65) years, or who shall have served continuously as a police officer for a period of not less than twenty-five (25) years, or who shall have become incapacitated to perform the duties of his office by reason of injury or accident sustained while actually engaged in the performance of his duties as an officer."

**11-1815. (5107) Salary of chief of police.** That from and after July 1, 1969, the salary of the chief of police in cities of the first class shall not be less than six hundred fifty dollars (\$650) per month for the first year of service, and thereafter of at least six hundred fifty dollars (\$650) per month, plus one per cent (1%) of said minimum base monthly salary for each additional year of service up to and including the twentieth year of such additional service. Subject to such minimum the salary of the chief of police may be increased from time to time by the mayor, subject to the consent and approval of the council.

**History:** En. Sec. 13, Ch. 136, L. 1907; Sec. 3316, Rev. C. 1907; re-en. Sec. 5107, R. C. M. 1921; amd. Sec. 1, Ch. 9, L. 1951; amd. Sec. 1, Ch. 29, L. 1957; amd. Sec. 1, Ch. 356, L. 1969.

**Amendments**

The 1969 amendment substituted "1969" for "1957" and raised the minimum salary from \$450 to \$650 per month.

**11-1817. (5108.1) Age restriction on policemen—not applicable to veterans, present members and police reserves.** The members of the police department on the active list of any city at the time of their appointment under this act shall not be less than eighteen (18) years of age, nor more than thirty-five (35) years of age, but this restriction shall not apply to any member of any present police department, nor to police reserves hereinafter provided for nor to honorably discharged persons who served in the armed forces of the United States in time of war, providing such time of service be not less than three (3) months.

**History:** En. Sec. 1, Ch. 100, L. 1927; amd. Sec. 1, Ch. 16, L. 1929; amd. Sec. 1, Ch. 120, L. 1929; amd. Sec. 1, Ch. 93, L. 1947; amd. Sec. 12, Ch. 94, L. 1973.

**Amendments**

The 1973 amendment reduced the minimum age for policemen from twenty-one to eighteen years; and made a minor change in style.

**11-1818. (5108.2) Repealed.**

**Repeal**

Section 11-1818 (Sec. 2, Ch. 100, L. 1927; Sec. 2, Ch. 120, L. 1929; Sec. 1, Ch. 78, L.

1937), relating to metropolitan police reserves, was repealed by Sec. 21, Ch. 335, Laws of 1974, effective July 1, 1975.



**11-1819. (5108.3) Police reserves may be called into active service, when.****Compiler's Notes**

Section 3, Ch. 489, Laws 1977, and Sec.

6, Ch. 85, Laws 1977, substituted "retired list" in this section for "reserve list."

**11-1820, 11-1821. (5108.4, 5108.5) Repealed.****Repeal**

Section 11-1821 (En. Secs. 4, 5, Ch. 100, L. 1927; Secs. 4, 5, Ch. 120, L. 1929; Sec. 1, Ch. 15, L. 1939; Sec. 1, Ch. 69, L. 1951; Sec. 1, Ch. 45, L. 1953; Sec. 1, Ch. 176, L. 1955; Sec. 1, Ch. 369, L. 1971; Sec. 1, Ch. 393, L. 1973; Sec. 1, Ch. 35, L. 1974), relating to metropolitan police reserves, was

repealed by Sec. 21, Ch. 335, Laws of 1974, effective July 1, 1975.

**Compiler's Notes**

Section 2, Ch. 535, Laws 1975, purported to amend sec. 11-1821, which was repealed by Sec. 21, Ch. 335, Laws 1974.

**11-1821.1. Repealed.****Repeal**

Section 11-1821.1 (Sec. 1, Ch. 263, L. 1973), relating to the exemption of police

pension payments from creditor process, was repealed by Sec. 17, Ch. 224, Laws 1977 and by Sec. 42, Ch. 456, Laws 1977.

**11-1822.1. Continuation of salary of officer injured in performance of duty.** (1) A member of a municipal law enforcement agency of a first or second class municipality who is injured in the performance of his duties so as to necessitate medical or other remedial treatment and render him unable to perform his duties shall be paid by the municipality by which he is employed the full amount of his regular salary, less any amount he may receive from workers' compensation, until his disability has ceased or for a period not to exceed one year whichever shall first occur.

**History:** En. 11-1822.1 by Sec. 1, Ch. 451, L. 1977.

to pay the salaries of police officers injured in the performance of their duties and to provide for assignment of such an officer to light duty or, with his consent, to another agency.

**Title of Act**

An act to provide that municipalities of the first or second class shall continue

**11-1822.2. Determination of eligibility for continued salary.** (1) The determination of whether an injury was incurred during or resulted from the performance of duty shall be made by the municipality. The injured officer may appeal the decision to the municipal law enforcement board available to him.

(2) The determination of whether the injury resulted in a disability shall be made by the municipality, with the advice of medical opinion. The injured officer may appeal the decision to the municipal law enforcement board available to him.

**History:** En. 11-1822.2 by Sec. 2, Ch. 451, L. 1977.

**11-1822.3. Periodic medical examinations—waiver of right to salary.** (1) The municipality may appoint a physician to examine the officer from time to time. If the injured officer has recovered and is physically able to perform light duty or his regular duties, the physician shall certify that fact.

(2) An injured officer who unreasonably refuses to accept medical treatment or hospital care or to permit medical examination as authorized

by subsection (1) waives his right under 11-1822.1 to receive his regular salary during his absence from service.

History: En. 11-1822.3 by Sec. 3, Ch. 451, L. 1977.

**11-1822.4. Discontinuation of salary when retirement allowance granted.** Payment of a regular salary under 11-1822.1 shall be discontinued if the officer is disabled for an undetermined duration and is granted a disability retirement allowance under Title 11, chapter 18. If an application for such a retirement allowance is not made by the officer, application therefor may be made by the chief executive officer of the municipality by which such officer is employed.

History: En. 11-1822.4 by Sec. 4, Ch. 451, L. 1977.

**11-1822.5. Assignment to light duty or another agency.** (1) Whenever, in the opinion of the municipality supported by a physician's opinion, the officer is able to perform specified types of light police duty, payment of his regular salary under 11-1822.1 shall be discontinued if he refuses to perform such light police duty when it is available and offered to him. Such light duty shall be consistent with the officer's status as a law enforcement officer.

(2) With his consent, the officer may be transferred to another department or agency within the municipality.

History: En. 11-1822.5 by Sec. 5, Ch. 451, L. 1977.

**11-1822.6. Effect on probationary status.** If the injured officer is on probationary status at the time he becomes injured, the balance of his probationary time shall be suspended until he returns to regular duty or is discharged for cause.

History: En. 11-1822.6 by Sec. 6, Ch. 451, L. 1977.

**11-1822.7. Subrogation.** The municipality has a cause of action for reimbursement of sums it has paid to an officer as salary and for medical treatment against any third party against whom the officer has a cause of action for the injury which necessitated the payments by the municipality.

History: En. 11-1822.7 by Sec. 7, Ch. 451, L. 1977.

**11-1823. City's contribution to fund.** Each city, other than one of the first or second class, which has a police reserve fund and which did not elect to join the statewide police reserve fund provided for in Chapter 335, Laws of 1974, and which has not elected to participate in the plan under 11-1885 shall deposit in its fund monthly an amount equal to 11% of the total salaries for the preceding month paid to active police officers of such city, exclusive of overtime and payments in lieu of sick leave and annual leave. If the demand against a city for deposits in its fund is such

that it cannot be met within the general taxing authority of the city, an additional levy not to exceed 3 mills may be made until the general taxing authority is sufficient to meet the demand.

**History:** En. Sec. 7, Ch. 100, L. 1927; amd. Sec. 7, Ch. 120, L. 1929; amd. Sec. 2, Ch. 78, L. 1937; amd. Sec. 1, Ch. 78, L. 1949; amd. Sec. 1, Ch. 8, L. 1959; amd. Sec. 6, Ch. 335, L. 1974; amd. Sec. 1, Ch. 224, L. 1977; amd. Sec. 35, Ch. 456, L. 1977.

#### Compiler's Notes

This section was amended twice in 1977, once by Ch. 224 and once by Ch. 456. The code commissioner has made a composite section embodying some, but not all, the changes made by both amendments.

#### Amendments

The 1974 amendment rewrote this section, effective July 1, 1975. For prior version, see parent volume.

Chapter 224, Laws of 1977, designated the former section as subsection (1); deleted a second sentence which read: "Cities having such funds, not cities of the first or second class, as of the effective date of this act, and not having elected to come within the provisions of this act, shall likewise deposit in the fund of that city monthly an amount equal to eleven per cent (11%) of the total salaries, exclusive of overtime and payments in lieu of sick leave and annual leave, for the preceding month, paid to active police

officers of that city"; added subsection (2); and made minor changes in phraseology, punctuation and style.

Chapter 456, Laws of 1977, deleted a first sentence which read: "For the purpose of paying the salaries of policemen who have been placed upon the reserve list of cities under this act, the city or town council, or commissioners, shall deposit in the fund monthly an amount equal to eleven per cent (11%) of the total salaries for the preceding month paid to active police officers of that city, exclusive of overtime and payments in lieu of sick leave and annual leave"; substituted "Cities having police reserve funds, not cities of the first or second class, which did not elect to join the statewide police reserve fund provided for in Chapter 335, Laws of 1974, and which have not elected to participate in the plan under 11-1855 shall" at the beginning of the second sentence for "Cities having such funds, not cities of the first or second class, as of the effective date of this act, and not having elected to come within the provisions of this act, shall"; and deleted the third sentence which read: "Payments made by cities covered by this act shall be made by the treasurer of that city to the department of administration."

### 11-1824. (5108.8) Repealed.

#### Repeal

Section 11-1824 (Sec. 8, Ch. 100, L. 1927; Sec. 8, Ch. 120, L. 1929), relating to cities other than first and second class

cities coming under the provisions of the act, was repealed by Sec. 17, Ch. 224, Laws 1977 and by Sec. 42, Ch. 456, Laws 1977.

**11-1825. Officer's contribution deducted from salary.** The treasurer of an incorporated city which has a police reserve fund shall retain from the monthly salary of each police officer on the active list a sum equal to 6% of his monthly compensation for his services as a police officer, exclusive of overtime and payments made in lieu of sick leave and annual leave. The monthly deduction from the salaries of police officers shall be paid into the city's police reserve fund for the purpose of paying the salaries of police officers on the retired list.

**History:** En. Sec. 9, Ch. 100, L. 1927; amd. Sec. 9, Ch. 120, L. 1929; amd. Sec. 1, Ch. 54, L. 1953; amd. Sec. 7, Ch. 335, L. 1974; amd. Sec. 2, Ch. 224, L. 1977; amd. Sec. 36, Ch. 456, L. 1977.

#### Compiler's Notes

This section was amended twice in 1977, once by Ch. 224 and once by Ch. 456. Since the amendments do not appear to conflict, the code commissioner has made a

composite section embodying the changes made by both amendments.

#### Amendments

The 1974 amendment, effective July 1, 1975, substituted "has as of the effective date of this act or which hereafter may create a police reserve fund" for "may be hereafter subject to the provisions of this act"; increased the monthly deduction from 3% to 6%; inserted "exclusive of



overtime and payments made in lieu of sick leave and annual leave" after "such police officer"; and substituted "police reserve fund in the department of administration, or to the city's police reserve fund, as the case may be" near the end of the section for "fund created by the tax levy."

Chapter 224, Laws of 1977, substituted "July 1, 1975" near the beginning of the section for "the effective date of this act"; substituted "statewide fund" near the end of the section for "police reserve fund in the department of administra-

tion"; and made minor changes in phraseology, punctuation and style.

Chapter 456, Laws of 1977, deleted "as of the effective date of this act or which hereafter may create" before "a police reserve fund" near the beginning of the section; and substituted "to the city's police reserve fund" near the end of the section for "the police reserve fund in the department of administration, or to the city's police reserve fund, as the case may be."

**11-1826. Gifts and moneys to be applied to fund.** All moneys withheld from salaries of police officers for the violation of rules and regulations of such police departments, all bequests, gifts or emoluments, paid or given on account of any extraordinary service of any member of such police department, except when specifically allowed to be retained by such officer by the mayor, commissioners and chief of police, and all moneys derived from the provisions of this act, shall be placed in the police reserve fund, and transmitted promptly to the board of trustees.

History: En. Sec. 10, Ch. 100, L. 1927; amd. Sec. 10, Ch. 120, L. 1929; amd. Sec. 8, Ch. 335, L. 1974; amd. Sec. 37, Ch. 456, L. 1977.

#### Amendments

The 1974 amendment, effective July 1, 1975, inserted "**the police reserve fund, \* \* \*** as the case may be" at the end of

the section for "**the fund created by the tax levy of taxable property and per centum of salaries withheld from such police officers.**"

The 1977 amendment substituted "to the board of trustees" at the end of the section for "to the department of administration or to the board of trustees, as the case may be."

**11-1828. (5108.12) Local boards of trustees of fund.** (1) Each city or town which has a police reserve fund must have a board of trustees of such fund, except as provided in 82A-222.

(2) A board of trustees existing under subsection (1) must consist of the mayor, clerk, and attorney of the city or town and two members from the active list of police officers of the city or town.

(3) The two trustees who are also police officers shall serve terms of 2 years. They shall be selected by a majority vote of the members of the police department on the active list of the city or town. One shall be selected each year between May 1 and May 10, so that their terms are staggered. Immediately after the selection has been made, a certificate of election shall be certified to the city clerk by the chairman and secretary of the meeting at which the selection was made.

History: En. Sec. 12, Ch. 120, L. 1929; amd. Sec. 3, Ch. 224, L. 1977.

#### Amendments

The 1977 amendment completely rewrote this section, adding the provision citing § 82A-222 at the end of subsection (1) and deleting from subsection (3) a pro-

vision that one of the first two police officers chosen under this act serve a term of two years and the other a term of one year so that thereafter one officer would be chosen annually for a term of two years, but making no other apparent change in substance. See parent volume for prior text.

**11-1829. (5108.13) Actuarial valuation and investment of police reserve funds.** (1) (a) The city treasurer shall submit to the department

of community affairs before October 1 of each odd-numbered year all information requested by the department necessary to complete an actuarial valuation of the city's police reserve fund. The valuation shall consider the actuarial soundness of the police reserve fund for the 2 preceding fiscal years.

(b) The valuation is to be prepared by a qualified actuary selected by the department. A qualified actuary is a member of the American academy of actuaries or of any organization considered by the department to have similar standards.

(c) In each fiscal year in which an actuarial valuation is prepared, the department shall submit to the state auditor a request for payment of the expense incurred in securing the actuarial valuation. The expense may not exceed \$6,000 in any fiscal year. The state auditor shall make payment to the actuary designated in the request.

(2) Whenever the moneys in the police reserve fund exceed the greater of the following amounts, the city treasurer shall remit the excess to the state treasurer, who shall invest the remittances under the direction of the board of investments as provided in 79-311:

(a)  $1\frac{1}{2}$  times the monthly benefit paid in the preceding month; or

(b) \$5,000.

(3) After January 1, 1975, all investments of the police reserve fund shall be transferred as directed by the board of investments. The board of investments may defer a transfer to a date later than January 1, 1975, but not later than the maturity date of the investment. The board of investments may make rules to implement this section.

**History:** En. Sec. 13, Ch. 120, L. 1929; amd. Sec. 1, Ch. 84, L. 1971; amd. Sec. 1, Ch. 1, L. 1974; amd. Sec. 1, Ch. 128, L. 1974; amd. Sec. 16, Ch. 213, L. 1975; amd. Sec. 4, Ch. 224, L. 1977.

#### Compiler's Notes

This section was amended twice in 1974, once by Ch. 1 and once by Ch. 128. Since the amendment by Ch. 128 is not effective until January 1, 1975, the text of the amendment by Ch. 1 is set out above. The amendment by Ch. 128 reads as follows: "Actuarial valuation and investment of police reserve funds. (1) The city treasurer shall submit to the department of intergovernmental relations before October 1 in each odd-numbered year all information requested by the department of intergovernmental relations necessary to complete an actuarial valuation of the police reserve funds. This valuation is to be prepared by a qualified actuary selected by the department of intergovernmental relations. This valuation shall consider the actuarial soundness of the police reserve funds for the two (2) proceeding fiscal years. A qualified actuary is a member of the American Academy of Actuaries or of any organization deemed by the department of intergovernmental relations to have similar standards. In each fiscal year

in which an actuarial valuation is prepared, the department of intergovernmental relations shall submit to the state auditor a request for payment of the expense incurred in securing the actuarial valuation. The expense may not exceed six thousand dollars (\$6,000) in any fiscal year and the state auditor shall make payment to the actuary designated in the request.

(2) Whenever the moneys in the police reserve fund exceed:

(a) one and one-half ( $1\frac{1}{2}$ ) times the monthly benefit paid in the preceding month, or

(b) five thousand dollars (\$5,000), whichever is greater, then the city treasurer shall remit such excess amounts to the state treasurer. The state treasurer shall invest such remittances under the direction of the state board of investments as provided by section 79-311.

(3) After January 1, 1975, all investments of the police reserve fund shall be transferred as directed by the state board of investments. The state board of investments may defer any such transfer to a date later than January 1, 1975, but not later than the maturity date of the investment. The board of investment may make rules to implement this section."



**Amendments**

The 1971 amendment inserted "or in certificates of deposit issued by any state or national bank operating in Montana" at the end of the third sentence; inserted references to certificates in the fourth and fifth sentences; and made minor changes in phraseology and punctuation.

Chapter 1, Laws of 1974, authorized the investment of retirement fund money in time or savings deposits in building and loan associations and savings and loan associations and inserted a requirement that banks or associations in which in-

vestments are authorized operate in the county where the city or town is located in the state.

Chapter 128, Laws of 1974, rewrote this section, effective January 1, 1975. The text of the amendment is set out in the Compiler's Note above.

The 1975 amendment substituted "department of community affairs" for "department of intergovernmental relations" throughout the section.

The 1977 amendment made minor changes in phraseology, punctuation and style.

**11-1830. (5108.14) Limit on use of fund.** A police reserve fund may not be used for any purpose other than to make payments authorized by this chapter to members of the police department on the retired list and to make authorized investments.

**History:** En. Sec. 14, Ch. 120, L. 1929; amd. Sec. 5, Ch. 224, L. 1977.

**Amendments**

The 1977 amendment added "and to make authorized investments" at the end of the section; and made minor changes in phraseology.

**11-1832. (5108.16) Minimum wage of police in first and second class cities.** Each duly confirmed member of a police department of cities of the first and second class of the state of Montana is entitled to a minimum wage for a daily service of eight (8) hours' work, of at least seven hundred fifty dollars (\$750) minimum per month for the first year of service, and thereafter of at least seven hundred fifty dollars (\$750) minimum a month plus one per cent (1%) of the minimum base monthly salary of seven hundred fifty dollars (\$750) for each additional year service up to and including the twentieth year of additional service.

**History:** En. Sec. 1, Ch. 55, L. 1935; amd. Sec. 2, Ch. 96, L. 1939; amd. Sec. 1, Ch. 294, L. 1947; amd. Sec. 1, Ch. 47, L. 1951; amd. Sec. 1, Ch. 28, L. 1957; amd. Sec. 1, Ch. 266, L. 1967; amd. Sec. 1, Ch. 298, L. 1969; amd. Sec. 1, Ch. 314, L. 1973; amd. Sec. 2, Ch. 438, L. 1975.

**Amendments**

The 1969 amendment substituted "1969" for "1967," deleted "and second" between "cities of the first" and "class," raised the minimum monthly wage base in cities of the first class from \$400 to \$525; and added the second sentence, raising the minimum monthly wage base in cities of the second class from \$400 to \$475.

The 1973 amendment changed the effective date of the section from July 1, 1969 to July 1, 1973; increased the minimum salary for policemen in first class cities from \$525 to \$600 a month; increased the minimum salary of policemen in second class cities from \$475 to \$600 per month; and made minor changes in style and phraseology.

The 1975 amendment combined separate

sentences applying to first and second class cities; increased the starting salary and minimum salary from \$600 to \$750; and made minor changes in style and punctuation.

**Temporary Minimum Wage**

Section 1 of Ch. 438, Laws 1975 read "Between July 1, 1975, and June 30, 1976, each duly confirmed member of a police department of cities of the first and second class of the state of Montana is entitled to a minimum wage for a daily service of eight (8) hours' work of at least seven hundred dollars (\$700) minimum per month for the first year of service, and thereafter, of at least seven hundred dollars (\$700) per month plus one per cent (1%) of said minimum base monthly salary for each additional year of services. After July 1, 1976, the minimum wage of a member of a police department shall be as provided in section 11-1832."

**Funding**

Section 3 of Ch. 438, Laws 1975 read "In compliance with section 43-517, the



administration of this act is declared a public purpose of a city or town which may be paid out of the general fund of

the governing body and financed by a levy on the taxable value of property within the city or town."

**11-1832.2. Overtime compensation.** Members of police departments of cities of the first and second class, except those officers holding the rank of captain or above, are entitled to compensation for overtime as provided under section 41-2303 (b).

**History:** En. 11-1832.2 by Sec. 1, Ch. 333, L. 1973.

#### Title of Act

An act to provide for time and one-half pay for overtime for police officers.

**11-1834. Annual state payments to municipality with police department.** At the end of each fiscal year the state auditor shall issue and deliver to the treasurer of each city and town in Montana which has a police department and which is not a participant in the municipal police officers' retirement system his warrant for an amount computed in the same manner as the amount paid (or that would be paid if an existing relief association met the legal requirements for payment) to cities and towns for fire department relief associations pursuant to section 11-1919, R.C.M. 1947.

**History:** En. Sec. 1, Ch. 261, L. 1965; amd. Sec. 1, Ch. 229, L. 1975; amd. Sec. 38, Ch. 456, L. 1977.

pal police officers' retirement system"; and made a minor change in phraseology.

#### Amendments

The 1975 amendment substituted "amount computed in the same manner as the amount paid" for "amount equal to the sum paid"; inserted the language in parentheses; and made minor changes in phraseology and punctuation.

The 1977 amendment inserted "and which is not a participant in the municipi-

#### Conditions Attached to Appropriation

Where title of appropriation bill indicated that its purpose was to provide for annual payment to cities and towns for police reserve fund, section of statute which contained restrictions on such payments, contrary to provisions of Metropolitan Police Law (11-1801 through 11-1837) was repugnant to article V, section 23 of state constitution and therefore void. *City of Helena v. Ombolt*, 155 M 212, 468 P 2d 764.

**11-1835. State payments to come from insurance premium tax.** The payments provided for by sections 11-1829 and 11-1834 shall be paid from the premium tax collected on insurance sold in this state to insure against the risks enumerated in section 11-1919. Such payments will only be made after deductions have been made from the gross premium tax for cancellations and returned premiums.

**History:** En. Sec. 2, Ch. 261, L. 1965; amd. Sec. 2, Ch. 128, L. 1974; amd. Sec. 1, Ch. 230, L. 1975.

sentence; and substituted "the risks enumerated in section 11-1919" for "the following risks: motor vehicle physical damage; property damage; bodily injury."

#### Amendments

The 1974 amendment inserted the reference to section 11-1829.

The 1975 amendment deleted "motor vehicle" before "insurance" in the first

#### Effective Date

Section 3 of Ch. 128, Laws 1974 read "This act shall be effective on January 1, 1975."

**11-1836. Credit of payments to fund—annual report of board.** Each city or town which has a police reserve fund shall deposit the payment to the credit of its police reserve fund. The funds deposited in the police

reserve fund of a city or town after July 1, 1977, are limited to the investments in 79-310 except that the funds may not be invested in common stocks. However, these funds may be invested under the provisions of 79-311. The board of trustees of each police reserve fund shall on or before April 1 of each year report to the state auditor as to the financial condition of its fund. Payments provided for in 11-1829 and 11-1834 are in addition to those provided for in 11-1823.

**History:** En. Sec. 3, Ch. 261, L. 1965; amd. Sec. 9, Ch. 335, L. 1974; amd. Sec. 6, Ch. 224, L. 1977; amd. Sec. 39, Ch. 456, L. 1977.

#### Compiler's Notes

This section was amended twice in 1977, once by Ch. 224 and once by Ch. 456. The code commissioner has made a composite section embodying some, but not all, the changes made by both amendments.

#### Amendments

The 1974 amendment, effective July 1, 1975, substituted "police reserve fund" near the beginning of the first sentence for "police retirement system"; inserted "with the department of administration or" after "deposit said payment" in the

first sentence; added "as the case may be" at the end of the first sentence; and added the third sentence.

Prior to the amendments by chapters 224 and 456, Laws of 1977, this section read: "Every city or town, having a police reserve fund established under the provisions of the Metropolitan Police Law, shall deposit said payment with the department of administration or to the credit of the police reserve fund of such city or town, as the case may be. The board of trustees of each police officer's reserve fund shall on or before the first day of April of each year report to the state auditor as to the financial condition of their fund. Payments provided for in this section and the preceding two (2) sections (11-1834, 11-1835) are in addition to those provided for in section 11-1823."

### 11-1838, 11-1839. Repealed.

#### Repeal

Sections 11-1838 and 11-1839 (Secs. 1, 4, Ch. 335, L. 1974; Secs. 7, 8, Ch. 224, L.

1977), relating to police reserve fund, were repealed by Sec. 42, Ch. 456, Laws 1977.

**11-1839.1. Municipality—definition.** Unless the context requires a different meaning, any reference to "municipality", "city", or "town" in the laws governing police retirement and death and disability benefits includes those jurisdictions which, prior to the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban law enforcement services, or the entire county included in the county municipal consolidation.

**History:** En. 11-1839.1 by Sec. 1, Ch. 489, L. 1977.

the laws relating to firemen and police retirement and death and disability benefits.

#### Title of Act

An act relating to the terminology in

### 11-1840 to 11-1842. Repealed.

#### Repeal

Sections 11-1840 to 11-1842 (Secs. 5, 10, 11, Ch. 335, L. 1974; Secs. 9 to 10, Ch.

224, L. 1977), relating to police reserve fund, were repealed by Sec. 42, Ch. 456, Laws 1977.

**11-1842.1. Election to qualify previous military service.** (1) A member with 15 years or more of service may at any time prior to his retirement make a written election with the board to qualify all or any portion of his active service in the armed forces of the United States for the purpose of calculating retirement benefits, up to a maximum of 5 years if he is not

otherwise eligible to receive credit. To qualify this service he must contribute to the account the actuarial cost of granting the service to be determined by the board based on his compensation and normal contribution rate as of his 16th year and as many succeeding years as are required to qualify this service with interest from the date he becomes eligible for this benefit to the date he contributes. He may not qualify more of his military service than he has service in excess of 15 years. Military service purchased under this section may not be used in the determination of eligibility for a service retirement requiring a minimum of 20 years service.

(2) If a member has retired from active duty in the armed forces of the United States with normal service retirement benefits, he may not qualify his military service under subsection (1). However, a member who is serving or has served in the military reserves with the expectation of receiving a military service pension may qualify his active military service under subsection (1) if his active duty in the armed forces of the United States is not more than 25% of the total of all his years of military service, including reserve and active duty time.

History: En. 11-1842.1 by Sec. 1, Ch. 11, Title of Act

368, L. 1977. An act providing for qualification of military service for police retirement purposes.

**11-1843. Eligibility for police reserves.** (1) The following persons are eligible for the police reserves of a city and shall become police reserves as provided in this section:

(a) A person who is employed by any city as a police officer on July 1, 1975, is eligible for the police reserves when he has completed 20 years or more in the aggregate as a probationary officer, a regular officer, or a special officer of the police department, in any capacity or rank. A police officer serving in the United States military in time of war or national emergency shall be given credit in his police record for such service in the same manner as though he were on active police duty.

(b) A person who is first employed by a city as a police officer after July 1, 1975, is eligible for the police reserves when he has reached the age of 50 and has completed 20 years or more in the aggregate as a probationary officer, a regular officer, or a special officer of the police department, in any capacity or rank. He shall receive credit for military service as prescribed in subsection (a).

(c) Police officers, whether first employed before or after July 1, 1975, who reach the age of 65 while in active service shall pass from the active list to the retired list.

(d) When a police officer receives injuries or disabilities in the active discharge of his duties as a police officer, which injuries or disabilities are, in the opinion of the board of police commissioners or city council of the city or town, of such character as to impair his ability to discharge his duties as an active police officer, he shall become a member of the police reserves of the city or town.

(2) A police officer who is eligible for the retired list under subsection (1)(a) or (1)(b) of this section may transfer, as of the time he becomes



eligible, to the retired list or may elect to serve an additional 1 to 10 years as an active police officer, except that he may not elect to serve past his 65th birthday.

**History:** En. 11-1843 by Sec. 13, Ch. 335, L. 1974; amd. Sec. 11, Ch. 224, L. 1977.

#### Amendments

The 1977 amendment inserted the subsection (1) designation; redesignated former subdivisions (1) through (4) as subdivisions (1)(a) through (1)(d); reded-

ignated former subdivision (5) as subsection (2); deleted from the beginning of subdivision (1)(a) a clause defining "police officers"; substituted "July 1, 1975" for "the effective date of this act" throughout the section; and made minor changes in phraseology, punctuation and style.

**11-1844. Benefits.** (1) When a police officer is transferred from the active list to the retired list of a city, he shall thereafter receive monthly payments from the city's police reserve fund, as follows:

(a) A police officer who is eligible under 11-1843(1)(a) or (1)(b) and does not elect to serve any additional years as an active police officer or who is placed on the retired list under 11-1843(1)(c) prior to reaching 20 years of service shall receive a sum equal to one-half the base salary, excluding overtime and payments in lieu of sick leave and annual leave, he was receiving as an active officer computed on the highest salary received in any one month during his last year of active service.

(b) A police officer who is eligible after 20 years of service and who elects to serve additional years shall receive the payment provided for in subsection (1)(a) plus an additional 1% of such payment per year of additional service, up to a maximum of 60% of the base salary, excluding overtime and payment in lieu of sick leave and annual leave, he was receiving as an active officer computed on the highest salary received in any one month during his last year of active service. A police officer whose eligibility depends on 11-1843(1)(b) and who completes 20 years of service before reaching the age of 50 is considered to have elected to serve an additional year for each year between the completion of his 20th year of service and his 50th birthday, and he shall be paid the additional 1% for each such year.

(c) A police officer who is placed on the retired list under 11-1843(1)(c) and who was theretofore eligible at his option to be placed on the retired list under 11-1843(1)(a) or (1)(b) but elected to serve additional years shall be paid for the additional years over his original eligibility at the rate prescribed in subsection (1)(a).

(d) A police officer who is eligible under 11-1843(1)(d) before completing 20 years of service shall receive a sum equal to one-half the base salary, excluding overtime and payments in lieu of sick leave and annual leave, he was receiving as an active officer computed on the highest salary received in any one month during his last year of active service.

(e) A police officer who is placed on the retired list under 11-1843(1)(d) and who, at the time of his injury or disability, was eligible at his option to be placed on the retired list under 11-1843(1)(a) or (1)(b) but had elected to serve additional years and was then serving such additional years shall be paid for the additional years over his original eligibility at the rate prescribed in subsection (1)(a).

(2) Upon the death of a police officer on the active list or retired list of a city, his surviving spouse, if there be one, shall, as long as such spouse remains the surviving spouse, be paid from the city's police reserve fund a sum equal to one-half the base salary, excluding overtime and payments in lieu of sick leave or annual leave, he was receiving as an active officer computed on the highest salary received in any one month during his last year of active service. If the officer leaves one or more dependent minor children, then, upon his death if he leaves no surviving spouse or upon the death or remarriage of the surviving spouse, his surviving dependent minor children, collectively if there is more than one, shall receive the same monthly payments as a surviving spouse would receive, until they reach the age of 18 years or are married. The payments shall be made to their duly appointed, qualified, and acting guardian for their use. If there is more than one such child, upon each child reaching the age of 18 or marrying, the pro rata payments to that child shall cease and shall be made to the remaining children, until all the children have either reached the age of 18 or are married.

**History:** En. 11-1844 by Sec. 14, Ch. 335, L. 1974; amd. Sec. 12, Ch. 224, L. 1977; amd. Sec. 40, Ch. 456, L. 1977.

#### Compiler's Notes

This section was amended twice in 1977, once by Ch. 224 and once by Ch. 456. The code commissioner has made a composite section embodying some, but not all, the changes made by both amendments.

#### Amendments

Chapter 224, Laws of 1977, substituted "statewide fund or the city's police reserve fund, whichever is applicable" near the end of the introductory paragraph for "funds in this act provided for"; deleted "for the reserve list after twenty (20) years of service" after "eligible" near the beginning of subdivision (1)(a); substituted "11-1843(1)(a) or (1)(b)" after "eligible under" near the beginning of subdivision (1)(a) for "subsection (1) of section 13 of this act"; deleted "or for a police officer eligible for the reserve list after twenty (20) years of service under subsection (2) of section 13 of this act, who has reached his fiftieth year and who does not elect to serve any additional years as an active police officer; or a police officer who becomes eligible by reason of injury or disability under subsection (4) of section 13 of this act, before reaching twenty (20) years of service" after

"any additional years as an active police officer" near the middle of subdivision (1)(a); substituted "depends on 11-1843 (1)(b)" near the middle of subdivision (1)(b) for "depends upon subsection (2) of section 13 of this act"; substituted "11-1843(1)(a) or (1)(b)" near the middle of subdivisions (1)(c) and (1)(e) for "subsections (1) or (2) of section 13; inserted subdivision (1)(d); redesignated former subdivision (1)(d) as subdivision (1)(e); substituted "under 11-1843(1)(d)" near the beginning of subdivision (1)(e) for "by reason of injury or disability under subsection 4 of section 13 of this act"; substituted "statewide fund or the city's police reserve fund, whichever is applicable" near the middle of the first sentence of subsection (2) for "police reserve fund"; deleted "prior to the date of his demise or prior to the date he passed to the reserve list" after "service" at the end of the first sentence of subsection (2); deleted "dependent minor child surviving" after "more than one" near the middle of the second sentence of subsection (2); inserted "or marrying" near the middle of the fourth sentence of subsection (2); and made minor changes in phraseology, punctuation and style.

Chapter 456, Laws 1977, substituted "city's police reserve fund" near the end of the introductory paragraph for "funds in this act provided for."

**11-1845. Protection of benefits from legal process.** The benefits provided for in 11-1844 are not subject to execution, garnishment, attachment, or the operation of bankruptcy, insolvency, or other process of law and are unassignable except as specifically provided in 11-1845.1.

**History:** En. 11-1845 by Sec. 15, Ch. 335, L. 1974; amd. Sec. 1, Ch. 214, L. 1977; amd. Sec. 13, Ch. 224, L. 1977.

#### Compiler's Notes

This section was amended twice in 1977, once by Ch. 214 and once by Ch. 224.

Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

#### Amendments

Chapter 214, Laws of 1977, added "except as specifically provided in 11-1845.1" at the end of the section; and made minor changes in style.

Chapter 224, Laws of 1977, deleted "and in section 11-1814, R. C. M. 1947" after "11-1844"; and made minor changes in phraseology, punctuation and style.

#### Repealing Clause

Section 17 of Ch. 224, Laws 1977 read "Sections 11-1821.1 and 11-1824, R. C. M. 1947, are repealed."

**11-1845.1. Withholding of group insurance premium from retirement benefit.** A retiree who is a participant in an employee group insurance plan which permits participation in the group plan following retirement may elect to have the monthly premium for such group insurance withheld by the department of administration and paid directly by the department to the insurance carrier. In order to qualify for this withholding, a retiree must be a participant in a group insurance plan available to the employees of his former employer. No withholding may be made for any retiree covered by an individual insurance policy.

**History:** En. 11-1845.1 by Sec. 2, Ch. 214, L. 1977.

#### Title of Act

An act to allow retirees under the statewide police reserve fund, the highway patrolmen's retirement system, the game wardens' retirement system, the public employees' retirement system, the sheriffs'

retirement system, and the judges' retirement system who are enrolled in an employee group insurance plan to have the monthly premium deducted from their retirement benefits and paid directly to the carrier; amending sections 11-1845, 31-221, 68-1420, 68-2620, and 93-1126, R. C. M. 1947; providing an immediate effective date.

**11-1846. Cost-of-living increases.** (1) "Index" for purposes of this section shall mean, for any calendar year, that year's annual average consumer price index for urban wage earners and clerical workers, all items (1957-1959 = 100) compiled by the bureau of labor statistics, United States department of labor, or successor agency.

(2) Effective July 1, 1975, every service or disability retirement allowance then payable to a retired member or to his beneficiary shall be increased by a percentage equal to the lesser of one-half ( $\frac{1}{2}$ ) of the percentage increase in the index for 1974 from the index for 1970 or the index for 1974 from the index for the calendar year preceding the effective date of retirement of the member.

(3) Effective July 1, 1975, every survivorship annuity then payable to a member's beneficiary shall be increased by a percentage equal to the lesser of one-half ( $\frac{1}{2}$ ) of the percentage increase in the index for 1974 from the index for the calendar year 1970 or for the index for 1974 from the index for the calendar year preceding the date of death of the deceased member.

**History:** En. 11-1846 by Sec. 16, Ch. 335, L. 1974, effective, July 1, 1975.

**11-1846.1. Supplement to prior pensions.** (1) The payment for each fiscal year, commencing with the fiscal year beginning July 1, 1977, to the police officers, spouses, or minor children described in subsections (2)(a) through (2)(c) may be not less than one-half of the salary paid in that



fiscal year in the appropriate city or town to newly confirmed police officers.

(2) On or before April 1 of each year, the board of trustees or department of administration, as the case may be, shall make a report to the state auditor including the following information:

(a) the names of all police officers who are receiving payments from the police reserve fund of the city or town as of the date of the report and were receiving such payments prior to July 1, 1975;

(b) the names of all spouses or minor children who are receiving payments from the police reserve fund because of the death of a police officer who was receiving such payments prior to July 1, 1975;

(c) the names of all spouses or minor children who are receiving payments from the police reserve fund and who were receiving such payments prior to July 1, 1975, or, in the case of minor children, whose parent, the spouse of a police officer, was receiving such payments prior to July 1, 1975;

(d) for the purpose of determining the base figure for the computations set forth in subsection (4), the following information relating to the base fiscal year commencing July 1, 1976:

(i) the amount of the payments made in the base fiscal year to each police officer described in subsection (2)(a);

(ii) the amount of the payments made in the base fiscal year to each spouse or minor child (or children) described in subsection (2)(b) or (2)(c);

(iii) upon the death after the effective date of this act of any police officer on the reserve list who was receiving payments from the police reserve fund prior to July 1, 1975, and who is survived by a spouse or minor children entitled to receive payments therefrom, the amount which would have been paid to an eligible spouse of such police officer had that spouse been receiving payments in the base fiscal year.

(3) Each fiscal year, commencing with the fiscal year beginning July 1, 1977, immediately after the adoption by a city or town having a police reserve fund of its budget for that fiscal year, each such city or town shall report to the state auditor the salary for that fiscal year of a newly confirmed police officer of that city or town.

(4) The state auditor shall, upon receipt of the reports referred to in subsections (2) and (3), compute the difference between each amount reported under subsections (1)(d)(i) through (1)(d)(iii) and one-half the salary for the current fiscal year of a newly confirmed police officer of the appropriate city or town. The difference shall be paid by the state auditor out of the premium tax collected on insurance, as provided in 11-1835, to the treasurer of the appropriate city or town at the same time as and in addition to the payment to be made by the state auditor under 11-1834.

(5) The treasurer of each city or town receiving funds under subsection (4) shall immediately deposit them with the department of administration or to the credit of the city or town's police reserve fund, as the case may be. The department or board of trustees of the fund, as the case may be, shall use the funds to supplement the monthly payments to

persons described in subsections (2)(a) through (2)(c) so that the requirements of subsection (1) are met.

(6) If more than one minor child is entitled to supplementary payments under this section by virtue of the death of a common parent police officer, the minimum payment to such minor children under this section shall be determined as if there were one such minor child and the supplementary payment shall be made to the minor children collectively.

**History:** En. 11-1846.1 by Sec. 2, Ch. 406, L. 1977.

#### **Title of Act**

An act to provide for minimum payments to police officers, spouses, and minor children who were receiving payments from police reserve funds prior to July 1, 1975, and to the spouses and minor children of such police officers; to provide for the means of making the addi-

tional payments required to meet the minimum; amending section 11-1849, R. C. M. 1947; providing an immediate effective date.

#### **Effective Date**

Section 3 of Ch. 406, Laws 1977 provided the act should be effective on its passage and approval. Approved April 18, 1977.

**11-1847. Amounts paid to fund—returned when officer discontinued.** A police officer whose service with the city has been discontinued by other than death or placement upon the retired list shall be entitled to the return to him of the amounts paid to the fund through deductions from his salary. If he has ten (10) years or more of service, the amount paid shall include regular interest on such amounts. If he has less than ten (10) years of service, he shall receive only the amount paid through such salary deductions, without interest.

**History:** En. 11-1847 by Sec. 17, Ch. 335, L. 1974, effective, July 1, 1975.

### **11-1848. Repealed.**

#### **Repeal**

Section 11-1848 (Sec. 18, Ch. 335, L. 1974), relating to forms used under the

act, was repealed by Sec. 42, Ch. 456, Laws 1977.

**11-1849. Application to prior retirees and their beneficiaries.** Except where specific additional benefits are given under this act and future acts of the legislature to police officers, their spouses or minor children, who are, as of July 1, 1975, receiving payments from the police reserve fund of any city, and to that extent only, this act does not affect such police officers, spouses, or minor children, and, as to them, their rights and obligations shall be determined as if this act had not been passed.

**History:** En. 11-1849 by Sec. 19, Ch. 335, L. 1974; amd. Sec. 1, Ch. 406, L. 1977.

minor children already receiving such payments."

#### **Amendments**

The 1977 amendment inserted "and future acts of the legislature"; substituted "as of July 1, 1975" for "already"; and substituted "such police officers, spouses, or minor children" for "police officers already on the reserve list, or spouses or

#### **Repealing Clause**

Section 21 of Ch. 335, Laws 1974 read "Sections 11-1818, 11-1820, and 11-1821, R. C. M. 1947, are repealed."

#### **Effective Date**

Section 22 of Ch. 335, Laws 1974 read "This act is effective July 1, 1975."

**11-1850. Repealed.****Repeal**

Section 11-1850 (Sec. 20, Ch. 335, L. 1974; Sec. 14, Ch. 224, L. 1977), relating

to elections by other than first and second class cities, was repealed by Sec. 42, Ch. 456, Laws 1977.

**11-1851. Law enforcement mutual assistance authorized—powers, duties, rights, and privileges of assisting officers.** A peace officer or any law enforcement entity of any county or municipality or a state government law enforcement entity may request the assistance of a peace officer from another law enforcement entity within the state of Montana. A peace officer, while on such request for assistance, has the same powers, duties, rights, privileges, and immunities as a peace officer of the requesting entity.

**History:** En. 11-1851 by Sec. 1, Ch. 337, L. 1977.

**Title of Act**

An act to enable peace officers to retain all privileges and immunities from liability, and all pension, insurance, salary, and

other benefits to which they are normally entitled when responding to or providing assistance to any other peace officer who has called for assistance and providing guidelines for reimbursement of entities whose employees assist other entities under this act.

**11-1852. Peace officer rendering assistance entitled to all rights of employment.** A peace officer rendering assistance under 11-1851 is entitled to the same wage, salary, pension, workers' compensation, and all other service rights for such service as for service rendered within the law enforcement entity in which he is normally employed.

**History:** En. 11-1852 by Sec. 2, Ch. 337, L. 1977.

**11-1853. Employing entity to pay normal expenses for assisting officer—reimbursement in certain cases.** The law enforcement entity employing a peace officer who renders assistance shall make all wage, pension, and disability payments and payments for damage to clothing and equipment due to the officer as a result of the rendering of assistance and shall pay any medical expense incurred by the officer in rendering assistance for which the officer is not otherwise entitled to reimbursement by operation of law or a contract. Upon making such payment such law enforcement entity shall, if it so requests, be reimbursed by the law enforcement entity that requested the services for all payments made for wages and damage to clothing and equipment and for any medical expense for which neither the employing entity nor the officer is otherwise entitled to reimbursement by operation of law or a contract. The employing entity shall also provide workers' compensation coverage for its employees while rendering assistance.

**History:** En. 11-1853 by Sec. 3, Ch. 337, L. 1977.

**11-1854. Assisted entity liable for obligation resulting from rendered assistance.** A law enforcement entity requesting assistance under 11-1851 shall indemnify the assisting peace officer, his legal representative in case of death, or the furnishing law enforcement entity for any liability or obligation to indemnify created by 82-4322.1 and 82-4323 that may result from the assistance furnished.

**History:** En. 11-1854 by Sec. 4, Ch. 337, L. 1977.



**11-1855. Definitions.** As used in this act, the following definitions apply:

(1) "Auxiliary officer" means an unsworn, part-time, volunteer member of a law enforcement agency who may perform but is not limited to the performance of such functions as civil defense, search and rescue, office duties, crowd and traffic control, and crime prevention activities. An auxiliary officer has only the arrest authority granted a private person in 95-611.

(2) "General law enforcement duties" means patrol operations performed for detection, prevention, and suppression of crime and the enforcement of criminal and traffic codes of this state and its local governments.

(3) "Law enforcement agency" means a law enforcement service provided directly by a local government.

(4) "Law enforcement officer" means a sworn, full-time, employed member of a law enforcement agency who is a peace officer as defined in 95-210 and has arrest authority as described in 95-608.

(5) "Reserve officer" means a sworn, part-time, volunteer member of a law enforcement agency who is a peace officer as defined in 95-210 and has arrest authority as described in 95-608 only when authorized to perform these functions as a representative of the law enforcement agency.

**History:** En. 11-1851 by Sec. 1, Ch. 85, L. 1977.

**Title of Act**

An act to regulate volunteer peace offi-

cers by establishing minimum qualifying standards and authorizing the board of crime control to establish minimum training standards for such peace officers to safeguard the interests of the public.

**11-1856. Reserve officers.** (1) A local government may authorize reserve officers. A person who meets minimum standards for appointment as a peace officer may be appointed as a reserve officer. To be appointed, a person must:

(a) have resided in the state continuously for at least 1 year prior to the appointment and in the county where such appointment is made for a period of at least 6 months prior to the date of the appointment;

(b) be a citizen of the United States;

(c) be at least 18 years of age;

(d) be fingerprinted, and a search must be made of local, state, and national fingerprint files to disclose any criminal record;

(e) not have been convicted of a crime for which he could have been imprisoned in a federal penitentiary or state prison;

(f) be of good moral character as determined by a thorough background investigation;

(g) be a graduate of an accredited high school or the equivalent;

(h) be examined by a licensed physician within 30 days immediately preceding the date of appointment and pronounced in good physical condition; and

(i) possess a valid Montana driver's license.

(2) No reserve officer may be authorized to function as a representative of a law enforcement agency performing general law enforcement duties after 2 years from the original appointment unless the reserve officer has

satisfactorily completed a minimum 88-hour basic training program which must include but need not be limited to the following course content:

- (a) introduction and orientation—1 hour;
- (b) police ethics and professionalism—1 hour;
- (c) criminal law—4 hours;
- (d) laws of arrest—4 hours;
- (e) criminal evidence—4 hours;
- (f) administration of criminal law—2 hours;
- (g) communications, reports, and records—2 hours;
- (h) crime investigations—3 hours;
- (i) interviews and interrogations—2 hours;
- (j) patrol procedures—6 hours;
- (k) crisis intervention—4 hours;
- (l) police human and community relations—3 hours;
- (m) juvenile procedures—2 hours;
- (n) defensive tactics—4 hours;
- (o) crowd control tactics—4 hours;
- (p) firearms training—30 hours;
- (q) first aid—10 hours; and
- (r) examination—2 hours.

(3) The law enforcement agency is responsible for training its reserve officers in accordance with minimum training standards established by the Montana board of crime control.

(4) A reserve officer may serve as a peace officer only on the orders and at the direction of the chief law enforcement administrator of the local government.

(5) A reserve officer may act only in a supplementary capacity to the law enforcement agency. A reserve officer may be appointed as a full-time law enforcement officer through the procedures provided in Montana law for such appointments.

(6) The chief law enforcement administrator of a law enforcement agency with reserve officers shall appoint a full-time law enforcement officer of the agency as a reserve force coordinator. The reserve force coordinator shall coordinate the activities of the reserve force with those of the law enforcement agency. Reserve officers:

- (a) are subordinate to full-time law enforcement officers; and
- (b) may not serve unless supervised by a full-time law enforcement officer whose span of control would be considered within reasonable limits.

(7) No reserve officer may carry a weapon:

- (a) while on assigned duty until the reserve officer has qualified on the firing range with a weapon in compliance with the firearms qualifying course conducted by the Montana law enforcement academy; and
- (b) until authorized by the chief law enforcement administrator to carry a weapon.

(8) A reserve officer is vested with the same powers, rights, privileges, obligations, and duties as any other peace officer of this state upon being activated by the chief law enforcement administrator of the local government and while on assigned duty only.

(9) A reserve officer may not participate in any pension or retirement system established for full-time law enforcement officers.

(10) Each law enforcement agency that utilizes reserve officers shall provide full workers' compensation coverage for the officers while they are providing actual service for a law enforcement agency. Coverage shall be provided through the state compensation insurance fund, and the law enforcement agencies shall pay to the state fund an appropriate premium, as established by the state fund, to cover the insurance risk of providing coverage to the officers.

(11) A local government may not reduce the authorized number of full-time law enforcement officers through the appointment or utilization of reserve officers.

(12) Reserve officers serve at the pleasure of the chief law enforcement administrator and may be terminated at any time by the chief law enforcement administrator by written notification without any cause.

**History:** En. 11-1852 by Sec. 2, Ch. 85,  
L. 1977.

**11-1857. Reserve manual required.** The authorizing law enforcement agency establishing a law enforcement reserve force shall adopt and publish a manual setting forth the minimum qualifications, minimum training standards, and standard operating procedures for reserve officers.

**History:** En. 11-1853 by Sec. 3, Ch. 85,  
L. 1977.

**11-1858. Auxiliary officers.** (1) A local government may authorize auxiliary officers only on the orders and at the direction of the chief law enforcement administrator of the local government. Auxiliary officers:

(a) are subordinate to full-time law enforcement officers; and  
(b) may not serve unless supervised by a full-time law enforcement officer.

(2) No auxiliary officer may carry a weapon while on assigned duty.

(3) An auxiliary officer may not participate in any pension or retirement system established for full-time law enforcement officers.

(4) Each law enforcement agency that utilizes auxiliary officers shall provide full workers' compensation coverage for the officers while they are providing actual service for a law enforcement agency.

**History:** En. 11-1854 by Sec. 4, Ch. 85,  
L. 1977.

**11-1859. Exceptions.** Provisions of subsections (1) and (2) of 11-1856 do not apply to auxiliary officers, to sworn volunteer peace officers who are not assigned to general law enforcement duties, or to members of a posse organized to quell public disturbance or domestic violence in accordance with 16-2702(6).

**History:** En. 11-1855 by Sec. 5, Ch. 85,  
L. 1977.

#### **Standardization of Terminology**

Section 6 of Ch. 85, Laws 1977 provides:  
"To facilitate the use of common terminology for law enforcement purposes, the

code commissioner shall, where appropriate, change all statutory references to comply with the following rules:

"(1) Every reference to 'reserve officer' in the laws governing the police retirement system shall be changed to 'retired officer'.



"(2) Every reference to 'reserve list' in the laws governing the police retirement system shall be changed to 'retired list'."

**11-1860. Short title.** This act may be cited as the "Municipal Police Officers' Retirement Act".

**History:** En. 11-1860 by Sec. 1, Ch. 456, L. 1977.

#### **Title of Act**

An act creating a municipal police officers' retirement system and providing for its administration; amending sections 11-1823, 11-1825, 11-1826, 11-1834, 11-1836, and 11-1844, R. C. M. 1947; and repealing sections 11-1821.1, 11-1824, 11-1838, 11-1839, 11-1840, 11-1841, 11-1842, 11-1848, 11-1850, 82A-222, and 82A-223, R. C. M. 1947.

"If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

#### **Repealing Clause**

Section 42 of Ch. 456, Laws 1977 read "Sections 11-1821.1, 11-1824, 11-1838, 11-1839, 11-1840, 11-1841, 11-1842, 11-1848, 11-1850, 82A-222, and 82A-223, R. C. M. 1947, are repealed."

#### **Separability Clause**

Section 41 of Ch. 456, Laws 1977 read

**11-1861. Definitions.** Unless the context requires otherwise, the following definitions apply in 11-1860 through 11-1892:

(1) "Plan" means the municipal police officers' retirement system created by this act.

(2) "Prior plan" means the local police reserve or retirement fund of a city which elects to join the plan under 11-1885 or the statewide police reserve fund administered by the department of administration in accordance with Chapter 335, Laws of 1974.

(3) "Employer" means any city which participated in a prior plan or which elects to join this plan under 11-1885.

(4) "Administrator" means the public employees' retirement division of the department of administration.

(5) "Board" means the retirement board described in 82A-210.

(6) "Member" means a person who is employed by an employer as a police officer or who is entitled to a retirement allowance by virtue of his service to an employer as a police officer.

(7) "Member contributions" means the total of the deductions from the compensation of a member, either made during a period of active membership hereunder or made under a prior plan and transferred to this plan, standing to his credit, together with the interest thereon.

(8) "Monthly compensation" means the wage, excluding overtime, holiday payments, shift differential payments, compensation time payments, and payments in lieu of sick leave and annual leave, a member receives as an active police officer.

(9) "Final average salary" means the monthly compensation of a member, averaged over the last 36 months of his active service or, in the event he has not been a member that long, over the period of his membership.

(10) "Prior service" means a period of employment as a police officer for which credit was granted to a member under a prior plan and has been transferred to this plan.

(11) "Membership service" means a period of employment with an employer occurring after June 30, 1977, during which the withholdings

required by this act have been made from a member's monthly compensation and credited to his member contributions account. Pro rata credit shall be granted for employment on a part-time basis or for employment over a period of less than a complete fiscal year.

(12) "Credited service" means the aggregate of a member's prior service and membership service.

(13) "Member's annuity" means monthly payments for life derived from member contributions.

(14) "Employer annuity" means monthly payments for life derived from employer and state contributions.

(15) "Retirement allowance" means the employer annuity plus the member's annuity.

(16) "Minimum retirement date" or "normal retirement date" means the first day of the month coinciding with or immediately following, if none coincides, the date on which a member becomes both age 50 or older and completes 20 or more years of credited service.

(17) "Mandatory retirement date" means the first day of the month coinciding with or immediately following, if none coincides, the date on which a member attains age 65.

(18) "Retirement date" means the date on which the first payment of the retirement, disability, or survivor benefits of a member or a beneficiary is payable.

(19) "Totally and permanently disabled" means that the board, upon certification by a licensed and practicing physician, has determined that a member's disability is of such a nature as to permanently impair his ability to discharge his normal duties as a police officer.

(20) "Police officer" means a law enforcement officer employed by an employer.

(21) "Fund" means the agency account in the treasury system designated for the use of the plan.

History: En. 11-1861 by Sec. 2, Ch. 456,  
L. 1977.

**11-1862. Municipal police officers' retirement system established.** A municipal police officers' retirement system is established and shall be governed by the provisions of 11-1860 through 11-1892.

History: En. 11-1862 by Sec. 3, Ch. 456,  
L. 1977.

**11-1863. Active membership.** (1) A police officer becomes an active member under the plan:

- (a) on the date his employment by an employer commences;
- (b) on July 1, 1977, if he is employed by an employer on that date; or
- (c) in the case of an employer which elects to join the plan as provided in 11-1885, on the effective date of such election if he is employed by the employer on that date.

(2) Upon becoming eligible for membership, he shall complete such forms and furnish such proof as may be required by the board.

(3) No active member is eligible to be covered under any other mandatory retirement plan for police service to which an employer is required to

contribute on his behalf, except the Social Security Act, while he is eligible to be covered by this plan.

(4) A member is entitled to benefits based upon the entire period of his credited service and final average salary without regard to the number of employers by whom he was employed or the number of periods of his employment so that no duplication of credited service occurs.

History: En. 11-1863 by Sec. 4, Ch. 456,  
L. 1977.

**11-1864. Inactive membership.** (1) An active member becomes an inactive member upon the occurrence of the earlier of the following:

(a) the date he ceases to be employed by an employer and becomes entitled to a retirement allowance;

(b) the date of commencement of an approved absence from active duty with an employer of a substantial duration.

(2) An inactive member becomes an active member on the day he returns to active duty with an employer. Upon again becoming an active member, his retirement allowance, if any, shall cease being paid to him until he again becomes an inactive member.

History: En. 11-1864 by Sec. 5, Ch. 456,  
L. 1977.

**11-1865. Cessation of membership.** A member shall cease to be a member upon the occurrence of the earlier of the following:

(1) the date he withdraws his member contributions in lieu of all other benefits under the plan;

(2) the date of his death.

History: En. 11-1865 by Sec. 6, Ch. 456,  
L. 1977.

**11-1866. Employer and state contributions and funding sources.** (1) Employer and state contributions shall be paid to the administrator who shall, as soon as practicable after their receipt, deposit them with the state treasurer.

(2) The state of Montana shall make its contributions through the state auditor out of the premium tax on motor vehicle property and casualty insurance policies. Such payments shall be made annually from the gross premium tax after deduction for cancellations and returned premiums. The administrator shall notify the auditor of the annual compensation paid to all active members during the preceding year and the state's contribution shall be 12% of such compensation.

(3) Each employer shall make its contribution on behalf of members through the city treasurer or other appropriate official out of moneys available to the city for such purpose. The employer's contribution shall be 12% of the total monthly compensation paid to all active members during the preceding month and shall be payable monthly to the administrator.

(4) (a) It is found and declared by the legislature that many cities operating under prior plans have excess and unfunded liabilities under such prior plans, which liabilities cannot be amortized by the percentage contributions set forth in subsections (2) and (3).



(b) The administrator shall, on or before October 1, 1977, determine the excess and unfunded liability of each city which participates in the plan created by this act. The determination of the administrator, in the absence of fraud, abuse of discretion, or arithmetic error, is final and binding on each city. Each city found by the administrator to have an excess and unfunded liability under a prior plan, which as of July 1, 1977, is not funded by sums on deposit or funds available for deposit with the administrator, shall pay an additional sum over a period of time to amortize its excess liability as determined by the administrator. If any city and the administrator are unable by January 1, 1978, to negotiate and reduce to writing the terms of an agreement satisfactory to both of them for the city to amortize its excess liability, the administrator shall require such city to pay an additional sum to amortize its excess liability on July 1, 1977, over a period of not more than 40 years.

(c) Each city found by the administrator to be paying an amount in excess of the amount necessary to amortize its liabilities under the prior plan and under this act shall receive a credit in the accounts of the administrator for any such excess payments.

History: En. 11-1866 by Sec. 7, Ch. 456,  
L. 1977.

**11-1867. Member contributions.** (1) The treasurer or other appropriate official of each employer shall retain from the monthly compensation of each active member a sum equal to 6% of his monthly compensation, excluding overtime, holiday payments, shift differential payments, compensation time payments, and payments in lieu of sick leave and annual leave, for his services as a police officer. The monthly deduction from the salaries of police officers shall be paid to the administrator for the purpose of paying the retirement allowances of retired police officers.

(2) A member is at all times fully vested in the deductions made from his compensation as a member or as a member of a prior plan standing to his credit and may, at his discretion, withdraw the full amount of these deductions upon his termination of employment in accordance with 11-1873 and forfeit all rights and interest with respect to any benefits which would otherwise become payable under the plan.

History: En. 11-1867 by Sec. 8, Ch. 456,  
L. 1977.

**11-1868. Reinstatement after withdrawal of member contributions—redeposit of amounts withdrawn.** (1) Upon reinstatement to active membership, a member may redeposit in the fund, in one lump sum or in installments not to exceed 12 monthly or 24 semimonthly installments, an amount equal to the member contributions which he withdrew plus an amount equal to the interest which would have been credited to his account had he not withdrawn his member contributions. If a member makes such a redeposit, his credited service shall be reinstated.

(2) If an active member does not elect to make the redeposit provided for in subsection (1), he forfeits his credited service for the period attributable to the withdrawn member contributions.

History: En. 11-1868 by Sec. 9, Ch. 456,  
L. 1977.

**11-1869. Other moneys credited as employer contributions.** All gifts, bequests, or emoluments given to an employer or member for the benefit of the plan or because of any member's service as a police officer, except when specifically allowed to be retained by the member by his employer, and all moneys withheld from the monthly compensation of a member for violation of the rules of his employer shall be paid to the administrator. The administrator shall credit them to the fund and, as soon as practicable after their receipt, deposit them with the state treasurer. Such amounts are employer contributions but are in addition to the amounts required by 11-1866.

**History:** En. 11-1869 by Sec. 10, Ch. 456, L. 1977.

**11-1870. Application for service retirement.** On or after a member's minimum retirement date and prior to his mandatory retirement date, he may retire on a service retirement allowance by making written application to the employer. The employer shall forward the application to the board not less than 30 days or more than 90 days before the elected retirement date. The application shall state the elected retirement date.

**History:** En. 11-1870 by Sec. 11, Ch. 456, L. 1977.

**11-1871. Eligibility for disability retirement.** If a member is determined by the board to be totally and permanently disabled, he is entitled to a disability retirement allowance, regardless of the length of his service, commencing as of the first day of the month coinciding with or immediately following, if none coincides, the date on which he became totally and permanently disabled.

**History:** En. 11-1871 by Sec. 12, Ch. 456, L. 1977.

**11-1872. Procedure upon recovery from total and permanent disability.**  
(1) If an inactive member is determined by the board to be no longer totally and permanently disabled, his disability retirement allowance shall cease as of the date of such determination and he shall be notified of the determination by the board. The board may review the status of any inactive member at any time.

(2) Any inactive member whose disability retirement allowance is so cancelled shall be reinstated to the position held by him immediately before his retirement or to a position in the same classification with duties within his capacity. The board shall advise the employer that the disability retirement allowance has been cancelled and that the inactive member is eligible for reinstatement to duty. The fact that he was retired for disability may not prejudice any right to reinstatement to duty which the inactive member may have or claim to have.

(3) If the inactive member again becomes an active member by returning to active work for an employer within 30 days following his receipt of notice under subsection (1), he shall be considered to have been continuously employed during the term of his disability. If the inactive member fails to become an active member by returning to active work for an employer

within 30 days following receipt of such notice, his termination of employment shall be considered to have occurred as of his disability retirement date and the retirement allowance, if any, to which he becomes entitled on his service retirement shall be determined accordingly.

History: En. 11-1872 by Sec. 13, Ch. 456, L. 1977.

**11-1873. Termination of employment prior to retirement.** (1) Upon termination of the employment of an active member prior to his retirement date, he shall withdraw the amount of his member contributions in lieu of all other benefits under the plan. If he has 10 years or more of service, the amount paid shall include regular interest, at a rate to be determined by the board, on such amounts. If he has less than 10 years of service, he shall receive only the amount paid through salary deductions, without interest. If an active member's employment terminates by reason of his death, his beneficiaries are entitled to the benefits prescribed in 11-1875.

History: En. 11-1873 by Sec. 14, Ch. 456, L. 1977.

**11-1874. Retirement allowances to be monthly and fixed.** The retirement allowances granted under the provisions of 11-1860 through 11-1892 shall be paid in monthly installments. They may not be increased or decreased, except as specifically provided herein, or repealed or revoked except by an act of the Montana legislature.

History: En. 11-1874 by Sec. 15, Ch. 456, L. 1977.

**11-1875. Death benefits.** (1) A member's retirement allowance shall be paid first to the member during his lifetime and, upon his death, in the manner and to the persons designated in subsection (2).

(2) Upon the death of a police officer before or after retirement, his surviving spouse, if there is one, shall, as long as such spouse remains the surviving spouse, be paid from the fund a sum equal to one-half of the officer's final average salary. If the officer leaves one or more dependent minor children, then, upon his death if he leaves no surviving spouse or upon the death or remarriage of the surviving spouse, his surviving dependent minor children, collectively if there is more than one, shall receive the same monthly payments a surviving spouse would receive, until they reach the age of 18 years or are married. The payments shall be made to their duly appointed, qualified, and acting guardian for their use. If there is more than one such child, upon each child reaching the age of 18 years or marrying, the pro rata payments to that child shall cease and shall be made to the remaining children until all the children have reached the age of 18 years or are married.

History: En. 11-1875 by Sec. 16, Ch. 456, L. 1977.

**11-1876. Retirement benefits exempt from state or municipal tax.** Any money received as a retirement allowance in accordance with the provisions of 11-1860 through 11-1892 is exempt from any state or municipal tax.

History: En. 11-1876 by Sec. 17, Ch. 456, L. 1977.



**11-1877. Rights to benefits unassignable—protection from legal process.**

The benefits payable hereunder are not subject to the claims of any creditor of a member, beneficiary, or survivor or to attachment, garnishment, or other legal or equitable process. No member, beneficiary, or survivor may alienate, anticipate, commute, pledge, encumber, assign, or sell any of such benefits.

History: En. 11-1877 by Sec. 18, Ch. 456, L. 1977.

**11-1878. Retirement board—powers and duties.** (1) The board is authorized to administer, interpret, and enforce the provisions of 11-1860 through 11-1892.

(2) The board shall establish such uniform rules as are necessary to administer the provisions of 11-1860 through 11-1892. The board is the sole authority under 11-1860 through 11-1892 as to the conditions under which persons may become members of and receive benefits under the retirement system. The board shall determine and may modify allowances for retirement and disability under 11-1860 through 11-1892.

(3) The board shall determine whether a member has become totally and permanently disabled and whether the disability is duty-related. In the discharge of its duties regarding such determination, the board, any member thereof, or any duly authorized representative of the board may order medical examinations, conduct hearings, administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and documents considered necessary as evidence in connection with the claim for disability retirement. The board shall secure medical service and advice necessary to carry out the purposes of this section.

(4) Except as otherwise provided in 11-1860 through 11-1892, the department of administration, through the administrator and the board of investments, shall administer, invest, account for, and treat the funds deposited with it under 11-1860 through 11-1892 in accordance with the rules dealing with the public employees' retirement system, insofar as such rules are not inconsistent with those promulgated and adopted by the board. The contributions of the state, employers, and members paid to the administrator under 11-1860 through 11-1892 may be commingled for investment purposes.

History: En. 11-1878 by Sec. 19, Ch. 456, L. 1977.

**11-1879. Retirement account.** On July 1, 1977, there will be an account in the agency fund to be maintained on behalf of the plan. The state treasurer is the custodian of the account subject to the exclusive administrative control of the board.

History: En. 11-1879 by Sec. 20, Ch. 456, L. 1977.

**11-1880. Transfer of assets and liabilities from prior plans.** All funds and obligations constituting the assets and liabilities of prior plans, regardless of their form or who holds them, shall be transferred to the account

provided for in 11-1879. The board shall ascertain the amounts to be apportioned to each account upon the passage of this act, and the state treasurer shall transfer such amounts to the appropriate accounts on July 1, 1977.

History: En. 11-1880 by Sec. 21, Ch. 456, L. 1977.

**11-1881. Benefits to members of prior plans.** (1) All provisions of this plan are effective as to a member whose retirement date occurred prior to July 1, 1977, except the amount and mode of payment of such member's retirement allowance will remain unchanged.

(2) This act may not decrease the benefits of a member under a prior plan.

History: En. 11-1881 by Sec. 22, Ch. 456, L. 1977.

**11-1882. Actuarial valuation.** The board shall engage the services of a qualified actuary to conduct an actuarial valuation of the plan in each even-numbered year. It shall include the actuary's determination of the financial condition of the plan, the level of annual contributions required to maintain the plan on an actuarially sound basis, and, if applicable, the level of annual contributions required to amortize the excess and unfunded liabilities described in 11-1866(4). A qualified actuary is one who is a member of the American academy of actuaries or of any organization considered by the board to have similar standards.

History: En. 11-1882 by Sec. 23, Ch. 456, L. 1977.

**11-1883. Administrative expenses.** The expense of administration of 11-1860 through 11-1892, exclusive of amounts required to be paid as benefits to or on behalf of a member, shall be borne by the state and shall be in addition to the amounts required of it as contributions.

History: En. 11-1883 by Sec. 24, Ch. 456, L. 1977.

**11-1884. Taxing authority of employers.** (1) For the purpose of making contributions required of a city under 11-1860 through 11-1892, when the demand for deposits of such contributions cannot be met within the general taxing authority and other revenues available to the city for that purpose, the appropriate authority of the city may levy additional tax authorized by law until the general taxing authority and other revenue available for that purpose is sufficient to meet the demand.

(2) "General taxing authority", as used in this section, means that levy which the city may make under the all-purpose levy or under multiple-purpose levies, if the city is using multiple-purpose levies.

(3) No provision of any statute relating to the all-purpose levy may be so construed as to limit the additional taxing authority created by this section.

History: En. 11-1884 by Sec. 25, Ch. 456, L. 1977.

**11-1885. Election to join plan—transfer of assets.** (1) Cities other than those participating in the statewide police reserve fund administered by the department of administration in accordance with Chapter 335, Laws of 1974, as of June 30, 1977, may elect to join the plan by passing an ordinance stating the election and the consent of the city to be bound by the provisions of 11-1860 through 11-1892. Upon the enactment of such an ordinance, the provisions of 11-1860 through 11-1892 become applicable to the city. Any city enacting such an ordinance shall send a certified copy thereof to the board and shall, as soon as possible thereafter, deposit with the board all cash and securities held by it in its local police reserve or retirement fund. The value of the securities shall be determined by the board.

(2) The trustees or other administrative head of the local system as of the effective date of the election shall certify the proportion, if any, of the funds of the system that represents the accumulated contributions of the active members and the relative shares of the members as of that date. Such shares shall be charged to the employer and credited to the respective individual accounts of the members in the plan and administered as if the contributions had been made during membership in the plan. Any excess of employer credits over charges under this section will be offset, with interest, against future required employer contributions. Any excess of employer charges over credits under this section are payable by the employer, with interest, on a basis determined by the procedure described in subsections (4)(b) and (4)(c) of 11-1866.

**History:** En. 11-1885 by Sec. 26, Ch. 456, L. 1977.

**11-1886. Penalty for false statements or falsification of records.** (1) No person may knowingly make any false statement or permit to be falsified any records of the plan in an attempt to defraud the plan.

(2) If any change in records fraudulently made or any mistake in records inadvertently made results in any member, survivor, or beneficiary receiving more or less than he was entitled to, then, on the discovery of the error, the board shall correct the error and adjust the payments to the member, survivor, or beneficiary in an equitable manner.

(3) A person who violates any of the provisions of subsection (1) is guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding \$500 or imprisonment in the county jail for a term not exceeding 6 months, or both.

**History:** En. 11-1886 by Sec. 27, Ch. 456, L. 1977.

**11-1887. Board's authority to refuse to make payments.** The board may revoke, refuse to grant, or suspend a member's annuity for disability or death caused by wrongful conduct. If the disability causing a member to retire or the death of a member is directly and proximately caused by the member's immoral or intemperate conduct or gross negligence, the board may refuse to grant, revoke, or suspend the employer annuity.

**History:** En. 11-1887 by Sec. 28, Ch. 456, L. 1977.



**11-1888. Transfer of dormant member contributions to employer's account.** The board may, in its discretion, transfer member contributions to the employer's account if the member's contribution account has been dormant for a period of 10 years. No right of the member may be jeopardized by such a transfer, and the member contributions shall be transferred back to the member's name upon his subsequent reinstatement as a member.

**History:** En. 11-1888 by Sec. 29, Ch. 456, L. 1977.

**11-1889. Eligibility for service retirement.** (1) Members are eligible for retirement and shall retire as provided in this section:

(a) A member who was employed by an employer as a police officer on July 1, 1975, is eligible to receive a service retirement allowance when he has completed 20 years or more in the aggregate as a probationary officer, a regular officer, or a special officer, in any capacity or rank. A police officer serving in the United States military in time of war or national emergency shall be given credit in his police record for such service in the same manner as though he were on active police duty.

(b) A member who was or is first employed by an employer as a police officer after July 1, 1975, is eligible to receive a service retirement allowance when he has reached the age of 50 and has completed 20 years or more in the aggregate as a probationary officer, a regular officer, or a special officer, in any capacity or rank. He shall receive credit for military service as prescribed in subsection (1)(a).

(c) Police officers, whether first employed before or after July 1, 1975, who reach the age of 65 while in active service shall retire.

(2) A police officer who is eligible for service retirement under subsection (1)(a) or (1)(b) may retire as of the time he becomes eligible or may elect to serve an additional 1 to 10 years as an active police officer, except that he may not elect to serve past his 65th birthday, the mandatory retirement date.

**History:** En. 11-1889 by Sec. 30, Ch. 456, L. 1977.

**11-1890. Determination of retirement allowance.** Retirement allowances under 11-1860 through 11-1892 shall be paid out of the fund and shall be determined as follows:

(1) A police officer who is eligible under subsection (1)(a) or (1)(b) of 11-1889 and does not elect to serve any additional years as an active police officer or who is retired under 11-1889(1)(c) prior to reaching 20 years of service shall receive a service retirement allowance equal to one-half his final average salary.

(2) A police officer who is eligible for service retirement after 20 years of service and who elects to serve additional years shall receive the allowance provided for in subsection (1) plus an additional 1% of such allowance per year of additional service, up to a maximum of 60% of the final average salary. A police officer whose eligibility depends on 11-1889(1)(b) and who

completes 20 years of service before reaching the age of 50 is considered to have elected to serve an additional year for each year between the completion of his 20th year of service and his 50th birthday and shall be paid the additional 1% for each such year.

(3) A police officer who is retired under 11-1889(1)(c) and who was theretofore eligible at his option to be retired under subsection (1)(a) or (1)(b) of 11-1889 but elected to serve additional years shall be paid for the additional years over his original eligibility at the rate prescribed in subsection (2).

(4) A police officer who is eligible under 11-1871 before completing 20 years of service shall receive a disability retirement allowance equal to one-half his average final salary.

(5) A police officer who is retired under 11-1871 and who, at the time of his injury or disability, was eligible at his option to be retired under subsection (1)(a) or (1)(b) of 11-1889 but had elected to serve additional years and was then serving such additional years shall be paid for the additional years at the rate prescribed in subsection (2).

History: En. 11-1890 by Sec. 31, Ch. 456, L. 1977.

**11-1891. Department to provide forms—information from employers.** The department of administration shall prepare such forms as it finds necessary for the employers to complete to provide all the information necessary to administer 11-1860 through 11-1892, and the cities shall give the department of administration all data necessary to carry out the purpose and intent hereof.

History: En. 11-1891 by Sec. 32, Ch. 456, L. 1977.

**11-1892. Application of reserve and retirement provisions of prior law.** (1) As cities other than those participating in the statewide police reserve fund provided for in Chapter 335, Laws of 1974, currently have local police reserve funds, the legislature finds and declares that the law regarding such funds, although in conflict with 11-1860 through 11-1892, cannot be repealed. It is the express intention of the legislature to allow two separate and distinct retirement systems to exist. The first, which includes local police reserve funds, applies to such cities, other than those of the first and second class, which wish to adopt it. The second, created by this act, applies to first and second class cities, those other cities which wish to adopt it, and any city which has adopted the above-mentioned statewide police reserve fund.

(2) The following sections may not be applied in any way to a city operating under the plan created by this act: 11-1809, 11-1819, 11-1822, 11-1823, 11-1825, 11-1826, 11-1827, 11-1828, 11-1829, 11-1830, 11-1834, 11-1835, 11-1836, 11-1837, 11-1843, 11-1844, 11-1845, and 11-1847.

History: En. 11-1892 by Sec. 33, Ch. 456, L. 1977.

CHAPTER 19—FIRE DEPARTMENT—FIREFIGHTERS' DISABILITY  
AND PENSION FUND

## Section

- 11-1905. Qualifications of firefighters.
- 11-1909. Levy of tax for volunteer fire departments.
- 11-1910. Disability and pension fund.
- 11-1910.1. Definitions.
- 11-1910.2. Municipality—definition.
- 11-1911. Contributions to fund.
- 11-1912. Special tax levy for fund.
- 11-1914. Management of association and investment of fund.
- 11-1915. Benefits, allowed for, how allowed, and how paid.
- 11-1916. Theft from funds.
- 11-1917. Annual report of clerks of cities having fire department.
- 11-1919. State auditor to pay association out of insurance premium taxes.
- 11-1920. Estimate of payments.
- 11-1922. Formation of fire department relief association—membership, officers.
- 11-1923. Annual report of the secretary and treasurer, bond of treasurer and protection of moneys.
- 11-1924. Transfer of money into fund by city treasurer.
- 11-1925. Service pension.
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- 11-1926. Disability pension.
- 11-1927. Pensions to surviving spouses and children.
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- 11-1927.2. Supplement to prior pensions.
- 11-1928. Use of disability and pension fund.
- 11-1929. Protection of benefits from legal process—nonassignability.
- 11-1930. Management of fund.

## 11-1902 to 11-1904.

## Compiler's Notes

Section 3, Ch. 489, Laws 1977, substi-

tuted "firefighters" in these sections for "firemen."

**11-1905. (5113) Qualifications of firefighters.** The qualifications of firefighters shall be that they shall not, at the time of original appointment, be over thirty-one (31) years of age, and shall have passed a physical examination by a practicing physician duly authorized to practice in this state, which examination shall be in writing and filed with the city or town clerk, and at the option of said city or town shall be qualified voters of the city or town. Such examination shall disclose the ability of such applicant to perform the physical work usually required of firefighters in the performance of their duty.

**History:** En. Sec. 5, p. 74, L. 1899; re-en. Sec. 3330, Rev. C. 1907; re-en. Sec. 5113, R. C. M. 1921; amd. Sec. 1, Ch. 29, L. 1955; amd. Sec. 1, Ch. 217, L. 1969.

\* \* \* city or town" at the end of the first sentence and made a minor change in phraseology.

## Amendments

The 1969 amendment deleted "be qualified voters of the city or town," after "they shall," added "and at the option

## Effective Date

Section 2 of Ch. 217, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 4, 1969.

**11-1909. (5116.1) Levy of tax for volunteer fire departments.** For the purpose of supporting volunteer fire departments in any city or town which does not have a paid fire department and for the purpose of purchasing the necessary equipment for them, the council in any city or town may levy, in addition to other levies permitted by law, a special tax not



exceeding 2 mills on each dollar of the taxable value of the property of the city or town subject to taxation.

**History:** En. Sec. 1, Ch. 26, L. 1927; amd. Sec. 26, Ch. 566, L. 1977.

#### Amendments

The 1977 amendment substituted "tax-

able value" near the end of the section for "assessed valuation"; deleted a proviso at the end of the section which defined assessed valuation; and made minor changes in phraseology, punctuation and style.

**11-1910. (5117) Disability and pension fund.** (1) A fund to be known as the "disability and pension fund" of the fire department relief association of the city or town shall be established and maintained in every city or town where the fire department has formed or hereafter forms an association under 11-1922.

(2) The fund shall be kept separate from other funds and shall be held by the treasurer of the association.

**History:** En. Sec. 1, Ch. 71, L. 1907; Sec. 3334, Rev. C. 1907; re-en. Sec. 5117, R. C. M. 1921; amd. Sec. 1, Ch. 58, L. 1927; amd. Sec. 2, Ch. 157, L. 1977.

#### Amendments

The 1977 amendment rewrote this section. See parent volume for prior text.

**11-1910.1. Definitions.** Unless the context requires otherwise, the following definitions apply in 11-1910 through 11-1930, 11-1927.1, 11-1927.2, and 11-3524:

(1) "Association" means the fire department relief association provided for in 11-1922.

(2) "Disability and pension fund" or "fund" means the fund provided for in 11-1910.

(3) "Fire department" includes all fire departments, consisting of paid, part-paid, or volunteer firemen or any combination thereof, recognized by the city or town council of an incorporated city or town of this state.

(4) "Incorporated city or town" includes county seats whether incorporated or not.

**History:** En. 11-1910.1 by Sec. 1, Ch. 157, L. 1977.

#### Title of Act

An act to generally revise and clarify the laws relating to firemen's retirement and death and disability benefits.

**11-1910.2. Municipality—definition.** Unless the context requires a different meaning, any reference to "municipality", "city", or "town" in the laws governing firemen's retirement and death and disability benefits includes those jurisdictions which, prior to the effective date of a county-municipal consolidation were incorporated municipalities, or subsequent districts created for urban fire protection services.

**History:** En. 11-1910.1 by Sec. 2, Ch. 489, L. 1977.

#### Standardization of Terminology

Section 3, Ch. 489, Laws 1977 read "To facilitate the use of common terminology for local government purposes, the code commissioner shall, where appropriate, change all statutory references to comply with the following rules:

"(1) Every reference to 'fireman' when

referring to a person who extinguishes dangerous fires shall be changed to 'firefighter'.

"(2) Every reference to 'reserve officer' in the laws governing police retirement and death and disability benefits shall be changed to 'retired officer'.

"(3) Every reference to 'reserve list' in the laws governing police retirement and death and disability benefits shall be changed to 'retired list'."

**11-1911. (5118) Contributions to fund.** (1) The disability and pension fund shall consist of:

(a) all bequests, fees, gifts, emoluments, donations or money from other sources given or paid to the fund, except as otherwise designated by the donor;

(b) a monthly fee which shall be paid into the fund by each paid or part-paid member of the association amounting to 6% of the member's regular monthly salary;

(c) the proceeds of the tax levy provided for in 11-1912;

(d) all moneys received from the state, including those provided for in 11-1919; and

(e) all interest and other income earned from the investment of the fund.

(2) A firefighter is entitled to a refund, in a lump sum and without interest, of all his monthly contributions to the fund, within 60 days after his permanent separation from service in the fire department, except for separation by reason of retirement, death, or disability which would otherwise qualify him or his surviving spouse or children to receive benefits or an allowance from the association. A firefighter who is eligible to receive a partial service pension under 11-1925.1 may either elect to take the refund provided for in this section or elect to receive the partial pension.

**History:** En. Sec. 2, Ch. 71, L. 1907; Sec. 3335, Rev. C. 1907; re-en. Sec. 5118, R. C. M. 1921; amd. Sec. 2, Ch. 58, L. 1927; amd. Sec. 1, Ch. 43, L. 1939; amd. Sec. 1, Ch. 208, L. 1967; amd. Sec. 3, Ch. 535, L. 1975; amd. Sec. 3, Ch. 157, L. 1977; amd. Sec. 1, Ch. 484, L. 1977.

#### Compiler's Notes

This section was amended twice in 1977, once by Ch. 157 and once by Ch. 484. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

#### Amendments

The 1975 amendment substituted "member's regular monthly salary" for "his regular monthly salary" in the first paragraph; substituted "made by the fireman" for "made by him" in the second paragraph; deleted "his" before "permanent

separation" in the second paragraph; substituted "the surviving spouse" for "his widow" in the second paragraph; and made a minor change in phraseology.

Chapter 157, Laws of 1977, inserted the subsection and subdivision designations; deleted "of the fire department relief association of such city or town" after "pension fund" in the introductory phrase of subsection (1); inserted "or money from other sources" in subdivision (1)(a); deleted "or any of its members" after "fund" in subdivision (1)(a); substituted subdivision (1)(e) for "the interest of any portion of such fund"; and made minor changes in phraseology, punctuation and style.

Chapter 484, Laws of 1977, inserted the subsection designations (1) and (2); added the second sentence of subsection (2); and made minor changes in phraseology, punctuation and style.

**11-1912. (5119) Special tax levy for fund.** (1) (a) The purpose of this section is to provide a means by which each disability and pension fund may be maintained at a level equal to 2% of the taxable valuation of all taxable property within the limits of the city or town.

(b) Whenever the fund contains less than 2% of the taxable valuation of all taxable property within the limits of the city or town, the governing body of the city or town shall, at the time of the levy of the annual tax, levy a special tax as provided in subsection (2). The special tax shall be collected as other taxes are collected and, when so collected, shall be paid into the disability and pension fund.

(2) (a) Whenever the total amount of the fund is less than 2% of the taxable valuation of all taxable property within the limits of the city or town, the special tax levy shall be:

(i) not less than 1 mill or more than 4 mills on each dollar of taxable valuation of all taxable property within the limits of the city or town; and

(ii) an amount sufficient to provide a growth per year in the fund, considering all sources of income to the fund and the payment of obligations out of the fund, equal to the sum produced by 1 mill levied on the taxable valuation of all the taxable property in the city or town.

(b) The special tax levy shall be a fractional part of 1 mill whenever:

(i) the total amount of the fund is less than 2% but more than 1% of the taxable valuation of all taxable property within the city or town; and

(ii) the special tax levy of a fractional part of 1 mill will produce sufficient revenue to cause the fund, considering all sources of income to the fund and all payments to be made out of the fund, to exceed 2% of the taxable valuation of all taxable property within the city or town.

(c) In cities of the third class, when the fund contains an amount which is less than 2% of the taxable valuation of all taxable property in the city or town, the city council shall levy an annual special tax of not less than 1 mill and not more than 4 mills on each dollar of taxable valuation of all taxable property within the city or town.

**History:** En. Sec. 3, Ch. 71, L. 1907; Sec. 3336, Rev. C. 1907; re-en. Sec. 5119, R. C. M. 1921; amd. Sec. 3, Ch. 58, L. 1927; amd. Sec. 1, Ch. 43, L. 1931; amd. Sec. 2, Ch. 43, L. 1939; amd. Sec. 1, Ch. 159, L. 1945; amd. Sec. 1, Ch. 183, L. 1949; amd. Sec. 1, Ch. 107, L. 1959; amd. Sec. 1, Ch. 24, L. 1965; amd. Sec. 2, Ch. 208, L. 1967; amd. Sec. 1, Ch. 170, L. 1974; amd. Sec. 4, Ch. 157, L. 1977.

“(2%)”; substituted “the city council shall” in subdivision 3 for “the city council may”; and inserted “of not less than one (1) mill and” in subdivision 3 after “special tax.”

The 1977 amendment rewrote this section. For prior text, see parent volume and 1974 amendment note.

#### Effective Date

Section 2 of Ch. 170, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 11, 1974.

#### Amendments

The 1974 amendment inserted “of the taxable valuation” in subdivision 3 after

**11-1914. Management of association and investment of fund.** (1) The board of trustees of the association shall audit the accounts of the association at least every 6 months and shall report the condition of them at the regular meeting of the association.

(2) (a) The management of the fire department relief associations in municipalities other than first and second class cities is vested in the boards of trustees, except as provided in subsections (2)(b) and (c).

(b) Subject to the provisions of subsection (2)(c), when so directed by a majority vote of the members of the association, the board of trustees may invest the surplus money in the fund or any part thereof in time or saving deposits in a solvent bank, building and loan association, or savings and loan association operating in the county where the city or town is located, in bonds or other securities of the United States government, or in general obligation bonds or warrants of any state, county, or city that are recommended by the state auditor and approved by the department of community affairs. At the time of purchase the investments must be stamped in bold-



face type, substantially as follows: "property of the ———— fire department relief association and negotiable only upon the order of the board of trustees of such association."

(c) When the average yield on investments of public retirement funds under the board of investments exceeds by 1% in any fiscal year the average yield on investments of the fund made pursuant to subsection (2)(b), the surplus money in the fund shall be remitted to the state treasurer for investment by the board of investments as is provided in subsection (3)(c) for associations in first and second class cities. Every 6 months the association shall submit a financial statement detailing its investments to the department of community affairs, and the department shall advise the association of the current yield on investments of public retirement funds.

(3) (a) The management of the fire department relief associations in first and second class cities is vested in the boards of trustees of the associations subject to the provisions of subsections (3)(b) and (c).

(b) The board of trustees shall submit to the department of community affairs before October 1 in each odd-numbered year all information requested by the department necessary to complete an actuarial valuation of the fund. The valuation shall consider the actuarial soundness of the fund for the 2 preceding fiscal years. The valuation is to be prepared by a qualified actuary selected by the department. A qualified actuary is a member of the American academy of actuaries or of any other organization considered by the municipal audit division to have similar standards. In each fiscal year in which an actuarial valuation is prepared, the department shall submit to the state auditor a request for payment of the expenses incurred in securing the actuarial valuation. These expenses may not exceed \$6,000 in any fiscal year. The state auditor shall make payment to the actuary designated by the request.

(c) The board of trustees shall remit the excess over the greater of the following amounts to the state treasurer, who shall invest the remittances under the direction of the board of investments as provided by 79-311, whenever the moneys in the disability and pension fund exceed:

- (i)  $1\frac{1}{2}$  times the monthly benefit paid in the preceding month; or
- (ii) \$5,000.

**History:** En. Sec. 5, Ch. 71, L. 1907; Sec. 3338, Rev. C. 1907; re-en. Sec. 5121, R. C. M. 1921; amd. Sec. 5, Ch. 58, L. 1927; amd. Sec. 1, Ch. 30, L. 1933; amd. Sec. 1, Ch. 9, L. 1963; amd. Sec. 1, Ch. 2, L. 1974; amd. Sec. 53, Ch. 348, L. 1974; amd. Sec. 1, Ch. 366, L. 1974; amd. Sec. 1, Ch. 197, L. 1975; amd. Sec. 17, Ch. 213, L. 1975; amd. Sec. 5, Ch. 157, L. 1977.

#### Amendments

Chapter 2, Laws of 1974, inserted "in any solvent bank, building and loan association or savings and loan association operating in the county where the city or town is located" in the third sentence of subsection (1).

Chapter 348, Laws of 1974, substituted "department of intergovernmental relations" for "state examiner" at the end of

the third sentence in subsection (1) and made minor changes in punctuation and phraseology.

Chapter 366, Laws of 1974, inserted the subsection designation (1) at the beginning of the section; substituted "management of the fire department relief associations in municipalities other than in first and second class cities" for "general management of the association" in the second sentence of subsection (1); and added subsections (2) through (4).

Chapter 197, Laws of 1975, deleted a former subsection (4) which read: "After January 1, 1975, all investments held by a board of trustees shall be transferred as directed by the state board of investments. The state board of investments may defer any such transfer to a date later than January 1, 1975, but not later

than the maturity date of the investment. The state board of investment may make rules to implement this section"; and made a minor change in punctuation.

Chapter 213, Laws of 1975, substituted "department of community affairs" throughout the section for "department of intergovernmental relations"; and made a minor change in punctuation.

The 1977 amendment inserted the subdivision designations (2)(a) through (2)

(c); redesignated the first paragraph of former subsection (2) as subsection (3)(a) and the second paragraph as subsection (3)(b); redesignated former subsection (3) as (3)(c); redesignated former subdivisions (3)(a) and (b) as (3)(c)(i) and (ii); inserted references to subsections as renumbered throughout the section; and made minor changes in phraseology, punctuation and style.

**11-1915. (5123) Benefits, allowed for, how allowed, and how paid.** Every fire department relief association may allow to its members benefits for the following causes, as provided by law.

1 to 5. \* \* \* [Same as parent volume.]

6. Pensions to the surviving spouse, orphan or orphans of a deceased member.

All applications for relief shall be referred to the board of trustees. All claims shall be referred to the board of trustees for allowance or disallowance and claimant shall have the right to appeal to the association in the event the claim be disallowed. All claims shall be paid by warrant, duly authorized, drawn by the secretary, and countersigned by the president of the association, and on presentation thereof, the treasurer of the association shall pay the same out of the said pension and disability fund.

**History:** En. Sec. 7, Ch. 71, L. 1907; Sec. 3340, Rev. C. 1907; re-en. Sec. 5123, R. C. M. 1921; amd. Sec. 6, Ch. 58, L. 1927; amd. Sec. 3, Ch. 208, L. 1967; amd. Sec. 4, Ch. 535, L. 1975.

#### Amendments

The 1975 amendment substituted "surviving spouse" for "widow" in item 6; and substituted "the claim" for "his claim" at the end of the second sentence of the last paragraph.

**11-1916. (5124) Theft from funds.** Any person who fraudulently appropriates any money or other valuable thing belonging to the disability and pension fund of any fire department relief association or who takes part in or in any manner aids in any scheme or plan whereby the fund or association is defrauded out of any of the money in the fund is guilty of theft and upon conviction thereof shall be punished by imprisonment in the state prison for not less than 1 year or more than 10 years.

**History:** En. Sec. 8, Ch. 71, L. 1907; Sec. 3341, Rev. C. 1907; re-en. Sec. 5124, R. C. M. 1921; amd. Sec. 7, Ch. 58, L. 1927; amd. Sec. 44, Ch. 359, L. 1977.

ulently appropriates" near the beginning of the section for "shall embezzle"; substituted "theft" near the end of the section for "a felony"; and made minor changes in phraseology, punctuation and style.

#### Amendments

The 1977 amendment substituted "fraud-

**11-1917. (5125) Annual report of clerks of cities having fire department.** On or before April 1, annually, the clerk of every city having an organized fire department, or a partly paid or volunteer department, shall file with the commissioner of insurance of this state his certificate stating such fact, the system of water supply in use in such fire department, the number of its organized companies, steam, hand, or other engines, hook-and-ladder trucks, hose-carts, and feet of hose in actual use, and such other facts as the commissioner may require.

History: En. Sec. 1, Ch. 129, L. 1911; re-en. Sec. 5125, R. C. M. 1921; amd. Sec. 1, Ch. 228, L. 1975.

#### Amendments

The 1975 amendment changed the deadline for filing the certificate from October 31st to April 1st.

### 11-1918. (5126) Repealed.

#### Repeal

Section 11-1918 (Sec. 2, Ch. 129, L. 1911; Sec. 8, Ch. 58, L. 1927; Sec. 1, Ch. 126, L. 1947; Sec. 1, Ch. 22, L. 1955; Sec.

1, Ch. 184, L. 1959), relating to reports of insurers, was repealed by Sec. 3, Ch. 264, Laws 1975.

**11-1919. (5127) State auditor to pay association out of insurance premium taxes.** (1) At the end of the fiscal year, the state auditor shall issue and deliver the payment described in this subsection to the treasurer of every city or town of the first and second class which has a fire department relief association entitled by law to receive payments. The payment shall be for the use and benefit of the association. It shall be paid out of the premium taxes on insurance risks enumerated in subsection (6) collected by the state auditor and shall be equal to 10% of the total annual compensation paid by the city or town to its paid or part-paid firefighters for services in the previous calendar year. The city clerk of the city or town shall certify in writing to the state auditor, on or before April 1 of each year, the amount paid by the city or town as compensation for services to paid or part-paid firefighters.

(2) When there is a disaster resulting in death or injury sufficient to draw the pensions of 10% of the active force and the fund, after receiving all moneys provided for in 11-1911, 11-1912, and subsection (1) of this section, does not show at least the 1-mill growth referred to in 11-1912, the treasurer of the association shall request and the state auditor shall issue and deliver an additional payment under the same conditions described in subsection (1). The payment shall be in an amount sufficient to cause at least the above-mentioned 1-mill growth in the fund.

(3) If a city is not entitled to receive a sum equal to  $1\frac{1}{2}$  mills of its total taxable value under subsections (1) and (2), the association of the city shall receive its money in the manner provided in subsections (4) and (5) for cities of the third class.

(4) At the end of the fiscal year, the state auditor shall issue and deliver the warrant described in this subsection to the treasurer of every city or town, except cities and towns of the first or second class, which has a fire department relief association entitled by law to receive payments. The warrant shall be for the use and benefit of the association. It shall be for an amount equal to  $1\frac{1}{2}$  mills of the total taxable value of the city or town and shall be paid out of the premium taxes on insurance risks enumerated in subsection (6) collected by the state auditor.

(5) If the payment provided for in subsection (4) is less than \$100, the association shall receive an additional payment from the same tax moneys so that the total amount received is \$100.

(6) The risks referred to in subsections (1) and (4) are:

(a) insurance of houses, buildings, and all other kinds of property against loss or damage by fire or other casualty;



(b) all kinds of insurance on goods, merchandise, or other property in the course of transportation, whether by land, water, or air;

(c) insurance against loss or damage to motor vehicles resulting from accident, collision, or marine and inland navigation and transportation perils;

(d) insurance of growing crops against loss or damage resulting from hail or the elements;

(e) insurance against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers, pumps, or other apparatus.

(f) insurance against loss or legal liability for loss because of damage to property caused by the use of teams or vehicles, whether by accident or collision or by explosion of any engine, tank, boiler, pipe, or tire of any vehicle; and

(g) insurance against theft of the whole or any part of any vehicle.

**History:** En. Sec. 3, Ch. 129, L. 1911; amd. Sec. 1, Ch. 49, L. 1915; re-en. Sec. 5127, R. C. M. 1921; amd. Sec. 9, Ch. 58, L. 1927; amd. Sec. 1, Ch. 127, L. 1933; amd. Sec. 1, Ch. 15, L. 1935; amd. Sec. 1, Ch. 127, L. 1947; amd. Sec. 1, Ch. 183, L. 1959; amd. Sec. 1, Ch. 54, L. 1963; amd. Sec. 4, Ch. 208, L. 1967; amd. Sec. 1, Ch. 203, L. 1969; amd. Sec. 1, Ch. 301, L. 1974; amd. Sec. 1, Ch. 227, L. 1975; amd. Sec. 2, Ch. 228, L. 1975; amd. Sec. 1, Ch. 264, L. 1975; amd. Sec. 6, Ch. 157, L. 1977; amd. Sec. 27, Ch. 566, L. 1977.

#### Compiler's Notes

This section was amended twice in 1977, once by Ch. 157 and once by Ch. 566. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

#### Amendments

The 1969 amendment inserted the second paragraph.

The 1974 amendment inserted the second preliminary paragraph; and made minor changes in style.

Chapter 227, Laws of 1975, inserted "enumerated in subsection (2)" (now subsection (6)) in the first paragraph (now subsection (1)); substituted references to "premium taxes" throughout the section for references to "license fees"; and made minor changes in phraseology.

Chapter 228, Laws of 1975, changed the due date for reports in the last sentence of the first paragraph (now subsection (1)) from "March 1" to "April 1" of each year.

Chapter 264, Laws of 1975, inserted the subsection designations; inserted "first or" before "second class" at the beginning of

subsection (3); increased the rate of valuation in subsection (3) from 25/100 mills to 45/100 mills; redesignated former subsection (1) as subsection (4); substituted "forty-five one hundredths (45/100) mills of the total assessed valuation of the city or town to be paid from premium taxes" in subsection (4) for "the taxes upon the fire portion of the direct premiums"; deleted former subdivision (1)(a) relating to cities or towns of other than first or second class; redesignated former subdivision (1)(b) as subsection (5) and former subsection (2) as subsection (6); and made minor changes in phraseology and style.

Chapter 157, Laws of 1977, divided the former first sentence of subsection (1) into the first three sentences; substituted "provided for in 11-1911, 11-1912 and subsection (1) of this section" in the first sentence of subsection (2) for "as designated in 11-1911 and 11-1912 and the 10% of annual compensation as designated in this chapter"; substituted "an additional payment under the same conditions described in subsection (1)" at the end of the first sentence and all of the second sentence of subsection (2) for "to the treasurer of every city or town of the first and second class, for the use and benefit of the fire department relief association legally existing in every city or town entitled to receive the same, out of the premium tax collected by him"; rewrote subsections (4) and (5) for clarification; and made minor changes in phraseology, punctuation and style.

Chapter 566, Laws of 1977, changed the amount in subsections (3) and (4) from 45/100 mills of total assessed valuation to 1½ mills of total taxable value.

**11-1920. Estimate of payments.** The state auditor shall estimate the portion of premium taxes needed to make the payments required by this

act and shall pay an amount equal to the estimate into the state treasury, to the credit of the earmarked revenue fund. The state auditor shall pay the actuary fee as required by section 11-1914. Any balances remaining after such payments have been ordered shall be transferred to the general fund.

**History:** En. Sec. 2, Ch. 15, L. 1935; amd. Sec. 69, Ch. 147, L. 1963; amd. Sec. 2, Ch. 366, L. 1974.

**Effective Date**

Section 3 of Ch. 366, Laws 1974 read "This act shall be effective on January 1, 1975."

**Amendments**

The 1974 amendment inserted the second sentence.

**11-1922. (5129) Formation of fire department relief association—membership, officers.** (1) The confirmed members of a fire department, as defined in 11-1910.1, may form a local association, to be known as the fire department relief association of the city or town of \_\_\_\_\_ (naming the city or town). When an association is formed, it shall be incorporated under the laws of this state. No one who is serving as a substitute, who is on probation, or who has not been confirmed as a member of the fire department is eligible for membership in the association.

(2) An association may only be formed and incorporated if:

(a) its formation is authorized by subsection (1); and

(b) the fire department has fire fighting equipment in serviceable condition which has a value of \$750 or more.

(3) When an association is formed the members shall elect officers by a majority vote. The officers shall be a president, a secretary, a treasurer, and five members to serve on the board of trustees. After the incorporation of an association, the officers shall be elected annually on or before April 15. The members may elect the city or town treasurer ex officio treasurer of the association by a majority vote.

**History:** En. Sec. 5, Ch. 129, L. 1911; re-en. Sec. 5129, R. C. M. 1921; amd. Sec. 11, Ch. 58, L. 1927; amd. Sec. 7, Ch. 157, L. 1977.

**Amendments**

The 1977 amendment inserted the subsection designations; added the last sentence in subsection (1); inserted subsec-

tion (2); in subsection (3), changed the make-up of the board of trustees from three elected members plus the chief of the department and the president of the relief association to five elected members and added the final sentence; and made minor changes in phraseology, punctuation and style.

**11-1923. Annual report of the secretary and treasurer, bond of treasurer and protection of moneys.** (1) The secretary and treasurer of the association shall annually prepare a detailed report of its receipts and expenditures for the preceding year, showing to whom and for what purposes money has been expended. They shall file the report with the association and a duplicate of it with the state auditor. No money may be paid to the treasurer of the association until the report is filed.

(2) No treasurer of an association may enter upon his duties until he has given the association a sufficient bond, of not less than 50% of the amount of the cash funds and securities of the association, for the faithful performance of his duties according to law. The amount of the bond shall

be approved by the association and may not exceed \$25,000. The bond shall be paid for by the association. If the city or town treasurer has been elected ex officio treasurer of the association, his official bond will cover the faithful discharge of his duties as such.

(3) The cash in the disability and pension fund shall have the same protection as to depository securities furnished by banks as the other funds of the city or town.

(a) All of the financial books and accounts of the association are subject at all times to examination by the department of community affairs.

(b) When a complaint is made to the department of community affairs that any money paid to the treasurer of the association has been or is being spent for an unauthorized purpose and, upon examination, the money is found to have been spent contrary to the authority given, the department shall so report to the governor, upon whose directions to the state auditor no further warrants may be issued to the association treasurer until the misspent money has been returned.

**History:** En. Sec. 6, Ch. 129, L. 1911; re-en. Sec. 5130, R. C. M. 1921; amd. Sec. 12, Ch. 58, L. 1927; amd. Sec. 1, Ch. 137, L. 1929; amd. Sec. 2, Ch. 30, L. 1933; amd. Sec. 1, Ch. 39, L. 1949; amd. Sec. 1, Ch. 67, L. 1953; amd. Sec. 54, Ch. 348, L. 1974; amd. Sec. 18, Ch. 213, L. 1975; amd. Sec. 8, Ch. 157, L. 1977.

#### Amendments

The 1974 amendment substituted references to "department of intergovernmental relations" in subsections (2) and (3) for references to "state examiner"; deleted from the beginning of subsection (3) a sentence authorizing an annual examination and a fee schedule therefor; and made minor changes in punctuation and phraseology. For prior version, see parent volume.

The 1975 amendment substituted "department of community affairs" for "department of intergovernmental relations" in subsections (2) and (3).

The 1977 amendment deleted from the end of present subsection (1) a sentence which read, "No one serving as a substitute or on probation, nor a person who has not been confirmed a member of an organized fire department, is eligible for membership in the relief association"; designated the former last two sentences of subsection (1) as the first two sentences of subsection (2); substituted the last two sentences of subsection (2) for "Upon a majority vote of the members of the association, the city or town treasurer shall be ex officio treasurer of the fire department relief association and the official bond of the city or town treasurer shall cover the faithful discharge of his duties as ex officio treasurer of the fire department relief association"; redesignated the last two sentences of former subsection (2) as subsection (3) and subdivision (3)(a); redesignated former subsection (3) as subdivision (3)(b); and made minor changes in phraseology, punctuation and style.

### 11-1924. (5131) Transfer of money into fund by city treasurer.

Whenever a fire department relief association has been formed and the treasurer of the association has furnished the bond required by 11-1923(2), the city treasurer shall pay to the treasurer of the association all money held by the city treasurer to the credit of the disability and pension fund, taking a proper receipt therefor. Thereafter, the city treasurer shall, as moneys are received by him for the credit of the fund or association, turn the same over to the treasurer of the association, taking proper receipts therefor.

**History:** En. Sec. 7, Ch. 129, L. 1911; re-en. Sec. 5131, R. C. M. 1921; amd. Sec. 13, Ch. 58, L. 1927; amd. Sec. 9, Ch. 157, L. 1977.

#### Amendments

The 1977 amendment substituted "required by 11-1923(2)" near the beginning of the section for "as provided by law"; and made minor changes in phraseology and punctuation.



**11-1925. (5132) Service pension.** (1) Each association shall pay, out of its disability and pension fund, a service pension to each of its members who elects to retire from active service after having completed 20 years or more of active duty and has reached the age of 50 years as a fully paid member of a paid or partly paid and partly volunteer fire department of the city or town in which the association was formed. The pension shall be equal to one-half of the sum last received by the member as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for his services as an active member of the fire department.

(2) Effective July 1, 1974, a member who completes 20 years of service and elects to serve additional years shall receive the pension provided for in subsection (1), increased at the rate of 1% per year for each additional year of service completed, up to a maximum of 60% of the sum last received by the member as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for his services as an active member of the fire department. No member is eligible to receive a service pension prior to attaining the age of 50 years.

(3) The monthly pension paid to members retiring on or after July 1, 1973, must be at least one-half the regular monthly salary, excluding overtime and payments in lieu of sick leave and annual leave, paid to a confirmed active firefighter of that city, as provided each year in the budget of that city. The monthly pension paid to a member retiring prior to July 1, 1974, must be at least \$200. In the case of volunteer firefighters, the pension may not exceed \$100 a month.

(4) As of July 1, 1977, a member is not eligible to receive a service pension under this section unless he is making a monthly contribution to the disability and pension fund as required by 11-1911, and is on active duty as a fully paid member of a fire department when he reaches the age of 50 years.

(5) A member of a pure volunteer fire department who has served 20 years or more as an active member of the fire department is entitled to the benefits provided for in this act regardless of his age. A member of a pure volunteer fire department who has completed 10 years' service as an active member of the fire department but who is prevented from completing 20 years' service by dissolution or discontinuance of his volunteer fire department, personal relocation due to transfer or loss of employment, personal disability, or any other factor beyond his reasonable control may nevertheless qualify for a partial or reduced pension in an amount and to the extent determined by the board of trustees of the association, regardless of his age.

**History:** En. Sec. 8, Ch. 129, L. 1911; amd. Sec. 1, Ch. 66, L. 1919; re-en. Sec. 5132, R. C. M. 1921; amd. Sec. 14, Ch. 58, L. 1927; amd. Sec. 1, Ch. 73, L. 1939; amd. Sec. 1, Ch. 98, L. 1945; amd. Sec. 1, Ch. 194, L. 1949; amd. Sec. 1, Ch. 56, L. 1963; amd. Sec. 5, Ch. 208, L. 1967; amd. Sec. 1, Ch. 267, L. 1973; amd. Sec. 1, Ch. 36, L. 1974; amd. Sec. 1, Ch. 163, L. 1974; amd. Sec. 1, Ch. 299, L. 1974; amd. Sec. 1, Ch. 58, L. 1977; amd. Sec. 10, Ch. 157, L. 1977; amd. Sec. 3, Ch. 484, L. 1977.

#### Compiler's Notes

This section was amended three times in 1977 by Chs. 58, 157, and 484. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by all amendments.

#### Amendments

The 1973 amendment inserted the third sentence in the first paragraph.

Chapter 36, Laws of 1974, inserted "excluding overtime and payments in lieu of

sick leave and annual leave" in two places in the first paragraph, the first after "compensation" near the end of the first sentence, and the second after "salary paid" near the middle of the third sentence; substituted "However, effective July 1, 1974, and after an active member has completed twenty (20) years of service the pension of the member who serves or has served an additional one (1) to ten (10) years shall be increased at the rate of one per cent (1%) per year for each additional year for service completed" at the beginning of the second sentence for "However, effective July 1, 1963, and after completing twenty (20) years or more of active service and attaining the age of fifty (50) years, a member elects to serve an additional one (1) to ten (10) years, then the pension shall be increased at the rate of one per cent (1%) per year of such additional service"; and added the proviso at the end of the second sentence.

Chapter 163, Laws of 1974, added the proviso at the end of the second paragraph.

Chapter 299, Laws of 1974, inserted the fourth sentence in the first paragraph.

Chapter 58, Laws of 1977, increased the compensation for volunteer firefighters from \$75 to \$100 a month.

Chapter 157, Laws of 1977, inserted the subsection designations; inserted "excluding overtime and payments in lieu of sick leave and annual leave" in subsection (2);

substituted "pension" for "compensation" in three places in subsection (3); deleted "without qualifying as to any provisions pertaining to an attained age" after "the fire department" near the beginning of subsection (5); added "regardless of his age" at the end of the first sentence of subsection (5); and made minor changes in phraseology, punctuation and style.

Chapter 484, Laws of 1977, inserted the subsection designations; and inserted subsection (4).

#### Effective Dates

Section 2 of Ch. 163, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 11, 1974.

Section 2 of Ch. 58, Laws 1977 provided the act should be effective upon its passage and approval. Approved March 19, 1977.

#### Interpretation

Section 4 of Ch. 484, Laws 1977 read "This act is not intended to increase or decrease benefits earned by present members under prior acts. The amendments in section 3 of this act are intended to clarify that section but are not intended to imply that prior to the effective date of this act a member could have retired prior to age 50 with full benefits to be paid at age 50."

### 11-1925.1. Partial service pension after early separation from service.

(1) A member of a fire department relief association is eligible to receive a partial service pension if he:

(a) has completed at least 10 years of active duty as a fully paid member of a fire department but has not both completed 20 years of service and attained age 50 as an active fireman;

(b) is permanently separated from service on or after the effective date of this act;

(c) does not qualify for a disability pension under 11-1926; and

(d) does not receive a refund of his contributions under 11-1911.

(2) The right to receive the pension vests upon the fireman's permanent separation from service, but the payments may not commence until the date he would have both reached his 50th birthday and completed 20 years of service as a member of a fire department had his active duty not been terminated.

(3) The pension shall be paid out of the disability and pension fund and shall consist of monthly payments in an amount equal to the number of years of the fireman's service divided by the number of years of service the fireman would have had if he had remained in active duty as a member of a fire department until the date he would have both attained age 50 and completed 20 years of service and multiplied by one-half of the sum last received by the fireman as a monthly compensation, excluding overtime



and payments in lieu of sick leave and annual leave, for his services as an active member of the fire department.

(4) If the fireman dies after he is permanently separated from service and before he both reaches the age of 50 years and completes 20 years of service as an active member of a fire department, the payments prescribed in subsection (3) shall be made to the surviving spouse commencing on the date the fireman would have both reached his 50th birthday and completed 20 years of service as an active member of a fire department and terminating upon the surviving spouse's death or remarriage. If there is no surviving spouse or the surviving spouse dies or remarries and if the fireman leaves one or more children who have not reached the age of 18 years, the children shall receive the payments until the youngest reaches the age of 18 years.

(5) If the fireman dies after he both reaches the age of 50 years and completes 20 years of service as an active member of a fire department, the payments shall be made to the surviving spouse or children as provided in subsection (4).

(6) The pension escalation provisions of 11-1925 do not apply to pensions received under this section.

**History:** En. 11-1925.1 by Sec. 2, Ch. 484, L. 1977.

**Title of Act**

An act to provide a partial service pension for paid firemen with 10 years or

more of active duty and clarifying eligibility for full service pension; amending sections 11-1911 and 11-1925, R. C. M. 1947; providing an immediate effective date.

**11-1926. (5133) Disability pension.** (1) Each association shall pay a disability pension, out of its disability and pension fund, to each of its members who has become disabled by reason of sickness or injury. The pension shall be equal to one-half of the sum last received by the member as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for his services to the fire department of the city or town in which the association was formed.

(2) Effective July 1, 1974, a member who completes 20 years of service and elects to serve additional years shall receive the pension provided for in subsection (1), increased at the rate of 1% per year for each additional year of service completed, up to a maximum of 60% of the sum last received by the member as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for his services as an active member of the fire department.

(3) The monthly pension paid to members retiring on or after July 1, 1973, must be at least one-half the regular monthly salary paid to a confirmed active firefighter of that city as provided each year in the budget of that city. The monthly pension paid to a member retiring prior to July 1, 1974, must be at least \$200. In the case of volunteer firefighters, the disability pension may not exceed \$75 a month.

**History:** En. Sec. 9, Ch. 129, L. 1911; amd. Sec. 2, Ch. 66, L. 1919; re-en. Sec. 5133, R. C. M. 1921; amd. Sec. 15, Ch. 58, L. 1927; amd. Sec. 2, Ch. 73, L. 1939; amd. Sec. 2, Ch. 98, L. 1945; amd. Sec. 2, Ch. 56, L. 1963; amd. Sec. 6, Ch. 208, L. 1967; amd. Sec. 2, Ch. 267, L. 1973; amd. Sec. 2, Ch.

36, L. 1974; amd. Sec. 2, Ch. 299, L. 1974; amd. Sec. 1, Ch. 47, L. 1975; amd. Sec. 11, Ch. 157, L. 1977.

**Amendments**

The 1973 amendment inserted the third sentence.



Chapter 36, Laws of 1974, inserted "excluding overtime and payments in lieu of sick leave and annual leave" after "monthly compensation" in the first and second sentences; and substituted "However, effective July 1, 1974, and after an active member has completed twenty (20) years of service the pension of the member who serves or has served an additional one (1) to ten (10) years shall be increased at the rate of one per cent (1%) per year for each additional year of service completed" at the beginning of the second sentence for "However, effective July 1, 1963, and after completing twenty (20) years or more of active service and attaining the age of fifty (50) years, a member elects to serve an additional one (1) to ten (10) years, then the pension shall be increased at the

rate of one per cent (1%) of such additional service."

Chapter 299, Laws of 1974, inserted the next to last sentence of the section.

The 1975 amendment deleted "contracted or received in line of duty" after "sickness or injury" in the middle of the first sentence.

The 1977 amendment added the subsection designations; substituted the present language at the beginning of subsection (2) for "However, effective July 1, 1974, and after an active member has completed twenty (20) years of service the pension of the member who serves or has served an additional one (1) to ten (10) years shall be" before "increased at the rate of 1% per year"; and made minor changes in phraseology, punctuation and style.

**11-1927. (5134) Pensions to surviving spouses and children.** (1) Each association shall pay, out of its disability and pension fund, a monthly pension to the surviving spouse or children of a deceased member of the association who on the date of his death was an active member of the fire department in the city or town in which the association was formed, who had elected to retire from active service in the fire department and receive a service pension as provided for by 11-1925, or who, prior to death, had suffered a sickness or injury and was receiving or was qualified to receive a disability pension as provided by 11-1926. The pension shall be equal to one-half of the last month's salary received as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, by the deceased member for services rendered as an active member of the fire department in the city or town in which the association was formed.

(2) Effective July 1, 1974, if the deceased member had completed 20 years of service and had elected to serve additional years, the pension provided for in subsection (1) shall be increased at the rate of 1% per year for each additional year of service completed, up to a maximum of 60% of the last month's salary received as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, by the deceased member for his services as an active member of the fire department.

(3) The monthly pension paid to the surviving spouse or children of an active member who dies after July 1, 1973, or an active member who elects to retire after July 1, 1973, must be at least one-half the regular monthly salary paid to a confirmed active firefighter of that city, as provided each year in the budget of that city. The monthly pension paid to the surviving spouse or children of an active member who died prior to July 1, 1974, or who elected to retire before July 1, 1974, must be at least \$200. In the case of volunteer firefighters, the pension may not exceed \$75 per month.

(4) A pension may be paid to the surviving spouse only so long as such spouse remains unmarried. A surviving spouse is not entitled to a pension under this section if the marriage was entered into after the firefighter had elected to retire from active service and had begun to

receive a service pension as provided for by 11-1925 or if the marriage was entered into after the firefighter had qualified for and had begun to receive a disability pension as provided for by 11-1926. The pension provided for in this section may not be paid to the children of deceased firefighters after they have attained the age of 18.

**History:** En. Sec. 10, Ch. 129, L. 1911; re-en. Sec. 5134, R. C. M. 1921; amd. Sec. 16, Ch. 58, L. 1927; amd. Sec. 3, Ch. 73, L. 1939; amd. Sec. 3, Ch. 98, L. 1945; amd. Sec. 3, Ch. 56, L. 1963; amd. Sec. 7, Ch. 208, L. 1967; amd. Sec. 3, Ch. 267, L. 1973; amd. Sec. 3, Ch. 36, L. 1974; amd. Sec. 3, Ch. 299, L. 1974; amd. Sec. 5, Ch. 535, L. 1975; amd. Sec. 12, Ch. 157, L. 1977.

#### **Amendments**

The 1973 amendment inserted the third sentence.

Chapter 36, Laws of 1974, inserted "excluding overtime and payments in lieu of sick leave and annual leave" after "monthly compensation" in the first and second sentences; and substituted "However, effective July 1, 1974, and after an active member had completed twenty (20) years of service the pension of the member who serves or has served an additional one (1) to ten (10) years shall be increased at the rate of one per cent (1%) per year for each additional year of service completed" at the beginning of the second sentence for "However, effective July 1, 1963, and after completing twenty (20) years or

more of active service and attaining the age of fifty (50) years, a member elects to serve an additional one (1) to ten (10) years, then the pension shall be increased at the rate of one per cent (1%) of such additional service."

Chapter 299, Laws of 1974, inserted the fourth sentence.

The 1975 amendment substituted "surviving spouse" throughout the section for "widow"; substituted "death" for "his decease" in the first sentence; substituted "services rendered" for "his services" near the end of the first sentence; and substituted "such spouse" for "she" near the beginning of the fifth sentence.

The 1977 amendment inserted the subsection designations; substituted the present language at the beginning of subsection (2) for "However, effective July 1, 1974, and after an active member has completed twenty (20) years of service the pension of the member who serves or has served an additional one (1) to ten (10) years" before "shall be increased at the rate of 1% per year"; and made minor changes in phraseology, punctuation and style.

**11-1927.1. Payment of death benefits in absence of spouse or child.** If a firefighter dies without leaving a surviving spouse or child, the association shall compute the total contributions made to the fund by the deceased member, and, if the deceased member had designated a beneficiary in writing to the association, the association shall issue a warrant for the amount of the total contributions payable to that beneficiary. If the deceased member had not nominated a beneficiary, the contributions shall be paid to his estate.

**History:** En. Sec. 1, Ch. 276, L. 1973; amd. Sec. 13, Ch. 157, L. 1977.

#### **Title of Act**

An act to establish procedures for the disposition of contributions made to the fire department relief association funds by unmarried members.

#### **Amendments**

The 1977 amendment substituted references to the "surviving spouse" and "child" for references to the "widow" and "orphan"; and made minor changes in phraseology, punctuation and style.

**11-1927.2. Supplement to prior pensions.** (1) In addition to the taxes on premiums required by law to be paid by each insurer doing business in this state that is authorized to effect insurance on risks enumerated in 11-1919, there is a tax of 1½% on the fire portion of the direct premiums received during the calendar year of 1975 and each succeeding year, with allowance for cancellations and returned premiums. The insurance commissioner shall collect the tax during March of each year and deposit the



moneys in the earmarked revenue fund. The auditor shall pay claims as provided in subsection (2) of this section. As those persons who are to receive the fund die, the tax shall be reduced proportionately, and when no eligible person, as defined by subsection (2), survives, the tax terminates and the remaining fund, if any, shall be transferred to the general fund.

(2) Effective January 1, 1976, each association shall pay to the firefighters retired before July 1, 1973, or their surviving spouses and children a monthly pension of not less than one-half the regular monthly salary paid to a confirmed active firefighter of that city, as provided each year in the budget of that city. In the case of volunteer firefighters, the pension may not exceed \$75 per month. Distribution of the funds provided for this purpose under subsection (1) shall be made as follows:

(a) At the beginning of each fiscal year the treasurer of each association shall request and the state auditor shall issue from the earmarked revenue fund and deliver to the treasurer of the respective city or town an amount certified to be equal to the total annual dollar difference between what the retirees or their surviving spouses and children received from the fund and one-half of the salary paid by the respective city or town to a confirmed active firefighter for the fiscal year just preceding.

(b) The treasurer of a city or town receiving the funds shall immediately disburse them to the treasurer of the respective association.

(c) The treasurer of the association shall utilize these funds to increase the monthly pension of retirees or their surviving spouses and children to an amount equal to one-half of the salary that was paid to a confirmed active firefighter in the city or town for the preceding year.

**History:** En. 11-1927.2 by Sec. 1, Ch. 32, L. 1975; amd. Sec. 14, Ch. 157, L. 1977.

orphans, and to provide for disbursement of that revenue.

#### Title of Act

An act to provide for a tax on fire insurance premiums for the purpose of adjusting pensions of firemen who retired prior to July 1, 1973, or their widows and

#### Amendments

The 1977 amendment substituted references to "surviving spouses" and "children" for references to "widows" and "orphans"; and made minor changes in phraseology, punctuation and style.

**11-1928. (5135) Use of disability and pension fund.** (1) The fund may not be used for any purpose other than investment, as provided in 11-1914, and the payment of the following:

(a) a service pension to a member who, by reason of service, has become entitled to a service pension;

(b) a pension to a member who has become permanently maimed or disabled;

(c) a benefit or allowance to a member who has suffered a permanent disabling injury;

(d) a benefit or allowance to a member who has contracted a permanent disabling sickness;

(e) a benefit, not exceeding \$750, to defray the funeral expenses of a member;

(f) benefits to the surviving spouse, child, or children of a deceased member as provided in this chapter;



(g) premiums on a blanket policy of insurance covering the members of the fire department and providing for payment of compensation in case of the death of or injury to any such member;

(h) the return of employee contributions as provided in this chapter.

(2) All claims shall be paid by warrant duly authorized, drawn by the secretary, and countersigned by the president of the association. On presentation of the warrant, the treasurer shall pay it out of the disability and pension fund.

**History:** En. Sec. 11, Ch. 129, L. 1911; re-en. Sec. 5135, R. C. M. 1921; amd. Sec. 17, Ch. 58, L. 1927; amd. Sec. 1, Ch. 103, L. 1931; amd. Sec. 8, Ch. 208, L. 1967; amd. Sec. 2, Ch. 47, L. 1975; amd. Sec. 6, Ch. 535, L. 1975; amd. Sec. 15, Ch. 157, L. 1977.

#### Amendments

Chapter 47, Laws of 1975, deleted "in line of duty" after "maimed or disabled" in subdivision 2, after "disabling injury" in subdivision 3 and after "disabling sickness" in subdivision 4.

Chapter 535, Laws of 1975, substituted "surviving spouse" for "widow" in subdivision 6.

The 1977 amendment inserted the subsection (1) designation; inserted "investment as provided in 11-1914" at the beginning of subsection (1); redesignated former subdivisions 1 through 8 as subdivisions (1)(a) through (1)(h); redesignated former subdivision 9 as subsection (2); and made minor changes in phraseology, punctuation and style.

**11-1929. (5136) Protection of benefits from legal process—nonassignability.** Any payments made or to be made under 11-1910 through 11-1930, 11-1910.1, 11-1927.1, 11-1927.2, and 11-3524(2) are not subject to judgments, garnishment, execution, or other legal process. A person entitled to a pension may not assign the right, and the association and trustees may not recognize any assignment or pay over any sum so assigned.

**History:** En. Sec. 12, Ch. 129, L. 1911; re-en. Sec. 5136, R. C. M. 1921; amd. Sec. 16, Ch. 157, L. 1977.

#### Amendments

The 1977 amendment substituted "made

under 11-1910 through 11-1930, 11-1910.1, 11-1927.1, 11-1927.2, and 11-3524(2)" for "made hereunder" near the beginning of the section; and made minor changes in phraseology and punctuation.

**11-1930. (5137) Management of fund.** Except as otherwise provided in this chapter, the association and its board of trustees have full charge, management, and control of the disability and pension fund.

**History:** En. Sec. 13, Ch. 129, L. 1911; re-en. Sec. 5137, R. C. M. 1921; amd. Sec. 17, Ch. 157, L. 1977.

#### Amendments

The 1977 amendment rewrote this section. See parent volume for prior text.

### 11-1932. [Transferred.]

#### Compiler's Notes

Section 1, Ch. 448, Laws 1977, renumbered this section as sec. 41-2303.1.

### 11-1935, 11-1936.

#### Compiler's Notes

Section 3, Ch. 489, Laws 1977, substi-

tuted "firefighters" in these sections for "firemen."

CHAPTER 20—FIRE PROTECTION IN UNINCORPORATED TOWNS—  
FIRE WARDENS, COMPANIES AND DISTRICTS

## Section

- 11-2003. Fire companies—how organized.
- 11-2007. Duties of chief.
- 11-2008. Fire protection—creation of fire districts—contracts with cities, towns, and private service—dissolution and change of boundaries.
- 11-2010. Trustees of fire districts—mutual aid agreements.
- 11-2020.1. Definitions.
- 11-2020.2. Certificate of eligibility.
- 11-2022. Disability, death, insurance and pension benefits.
- 11-2023. Qualification for compensation.
- 11-2024. Procedure for claiming benefits.
- 11-2024.1. Procedure for claiming death benefit.
- 11-2025. Payment of benefits.
- 11-2026. Administration of act.
- 11-2027. Rules to be made by division and board—office supplies.
- 11-2028. Earnings to be part of moneys.
- 11-2029. Reports of division and public employees' retirement system.
- 11-2030. Fire insurance premium tax to be paid into fund.
- 11-2031. Penalty for false statements or claims.

**11-2003. (5143) Fire companies—how organized.** Fire companies in incorporated cities and towns are formed and organized under special laws, or under authority conferred upon the city or town government. Those in unincorporated towns and villages are organized by filing, with the county clerk of the county in which they are located, a certificate in writing, signed by the foreman or presiding officer and secretary, setting forth the date of the organization, name, officers, and roll of active and honorary members, which certificate and filing must be renewed annually, on or before September 1 of each year. There must not be allowed to any such towns or villages more than one company for each one thousand inhabitants, but one company must be allowed in any city, town, or village where the population is less than one thousand. There must not be allowed to any fire company more than twenty-eight certificate members.

**History:** En. Sec. 3232, Pol. C. 1895; re-en. Sec. 2076, Rev. C. 1907; re-en. Sec. 5143, R. C. M. 1921; amd. Sec. 1, Ch. 69, L. 1977. Cal. Pol. C. Sec. 3335.

**Amendments**

The 1977 amendment substituted "annually, on or before September 1 of each year" for "every three months" at the end of the second sentence.

**11-2004, 11-2005.****Compiler's Notes**

Section 3, Ch. 489, Laws 1977, substi-

tuted references to firefighters in these sections for references to firemen.

**11-2007. (5147) Duties of chief.** (1) The chief of every fire department must inquire into the cause of every fire occurring in the town in which he is chief and keep a record thereof. He must aid in the enforcement of all fire ordinances duly enacted, examine buildings in the process of erection, report violations of ordinances relating to prevention or extinguishment of fires and, when directed by the proper authorities, institute prosecutions therefor and perform such other duties as may be by proper authority imposed upon him. His compensation, if any, must be fixed and paid by the city or town authorities. He must attend all fires with his badge of office conspicuously displayed. He must prevent injury to, take charge of, and preserve all property rescued from fires and return it to the owner on the payment of the expenses incurred in saving and keeping

it. The amount of the expenses, when not agreed to, shall be fixed by a justice of the peace.

(2) He must devise and formulate or cause to be devised and formulated a course or plan of instruction or training program making available to each regular member of his department not less than 30 hours of instruction per year in matters pertaining to firefighting, and he must supervise the operation of such plan or program.

**History:** En. Sec. 3236, Pol. C. 1895; re-en. Sec. 2080, Rev. C. 1897; re-en. Sec. 5147, R. C. M. 1921; amd. Sec. 6, Ch. 118, L. 1965; amd. Sec. 18, Ch. 157, L. 1977.

#### Amendments

The 1977 amendment inserted the subsection designations; deleted provisions requiring the chief to file with the public employees' retirement system a sworn cer-

tificate stating whether his company had qualified under former 11-2023(2)(A) and naming every member of his department who had satisfactorily complied with the requirements of former 11-2023(2)(C), and providing that such certificate must be open to public inspection (see § 11-2020.2 for current similar provisions); and made minor changes in phraseology, punctuation and style.

**11-2008. (5148) Fire protection—creation of fire districts—contracts with cities, towns, and private service—dissolution and change of boundaries.** (1) The board of county commissioners is authorized to establish fire districts in any unincorporated territory or town upon presentation of a petition in writing signed by the owners of 50% or more of the area of the privately owned lands included within the proposed district who constitute a majority of the taxpayers who are freeholders of such area and whose names appear upon the last completed assessment roll. The board shall, within 10 days after the receipt of the petition, give notice of the hearing thereof at least 10 days prior to the hearing by mailing a copy of the notice by first class mail to each freeholder in the district at the address shown in the assessment roll, by causing notices of the time and place of such hearing to be posted in at least three of the most public places within the area proposed to be established as a fire district, and by publishing the notice at least once not less than 10 or more than 20 days prior to the time of the hearing in a newspaper regularly published in the county in which such proposed district is situated. The board shall proceed to hear the petition at the time set or at any time within 5 days thereafter to which the same is postponed or continued with due notice and may grant the same unless it is established thereat that the petition bears insufficient signatures as above required or, if originally sufficient, that by reason of written withdrawals thereof it has become insufficient. The board shall render its decision within 30 days after the hearing. At the time of the annual levy of taxes the board of county commissioners may levy a special tax upon all property within such districts for the purpose of buying or maintaining fire protection facilities and apparatus for such districts or for the purpose of paying to a city, town, or private fire service the consideration provided for in any contract with the council of such city, town, or private fire service for the purpose of furnishing fire protection service to property within such district, and such tax must be collected as are other taxes. The relationship between fire district and the city, town, or private fire service shall be that of an independent contractor.

(2) Any fire district organized under this act may be dissolved by the board of county commissioners upon presentation of a petition therefor



signed by the owners of 50% or more of the area of the privately owned lands included within such fire district who constitute a majority of the taxpayers who are freeholders of such area and whose names appear upon the last completed assessment roll. The procedure and requirements outlined in subsection (1) above shall apply to such requests for dissolution of fire districts.

(3) Change of boundaries—division. Fire districts may be divided in the following manner: Whenever a petition in writing shall be made to the county commissioners, signed by the owners of 20% or more of the privately owned lands of an area proposed to be detracted from the original district who constitute 20% or more of the taxpayers who are freeholders within such proposed detracted area whose names appear upon the last completed assessment roll, the county commissioners shall, within 10 days from the receipt of such petition, give notice of the hearing of the petition by mailing a copy of the notice by first class mail to each freeholder in the district at the address shown in the assessment roll and by causing to be posted a notice thereof at least 10 days prior to the time appointed by them for the consideration of the petition in at least three of the most public places within the proposed detracted area and also in at least three of the most public places within the remaining area. The petition for detraction shall describe the boundaries of the proposed detracted area and the boundaries of the remaining area. The county commissioners shall, on the day fixed for hearing such petition (or on any legally postponed day), proceed to hear the petition. The petition shall be granted and the original districts shall thereupon be divided into separate districts, unless at the time of the hearing on such petition protests shall be presented by the owners of 50% or more of the area of the privately owned lands included within the entire original district who constitute a majority of the taxpayers who are freeholders of the entire original district and whose names appear upon the last completed assessment roll. If such required amount of protests are presented, the petition for division shall be disallowed. Upon the division of districts, moneys on hand shall be apportioned between the divided areas according to their respective taxable valuations; all other assets of the original district shall become the property of the remaining area, but a reasonable value shall be placed upon such "other assets" and the remaining area shall become indebted to the detracted area for its proportionate share thereof, based upon taxable valuations. Provided, however, that any detracted area shall remain liable for any existing warrant and bonded indebtedness of the original district.

(4) (a) Change of boundaries—annexation. Adjacent territory that is not already a part of a fire district may be annexed in the following manner: A petition in writing by the owners of 50% or more of the area of privately owned lands of the adjacent area proposed to be annexed who constitute a majority of the taxpaying freeholders within such proposed area to be annexed and whose names appear upon the last completed assessment roll shall be presented to the board of county commissioners. The commissioners shall hold a hearing on such petition in accordance with the procedure outlined in subsection (3) above and shall allow the annexation of such proposed adjacent territory unless protests are presented

at the hearing by the owners of 50% or more of the area of the privately owned lands included within the original district who constitute a majority of the taxpaying freeholders within the original district. Such annexed territory shall become liable for any outstanding warrant and bonded indebtedness of the original district.

(b) Adjacent territory that is already a part of a fire district may withdraw from such fire district and become annexed to another fire district in the following manner: A petition in writing by the owners of 50% or more of the privately owned lands of an area which is part of any organized fire district who constitute a majority of the taxpaying freeholders within such area, according to the last completed assessment roll, shall be presented to the county commissioners asking that such area be transferred to and included in any other organized fire district to which said area is adjacent. The petition must set forth the change of boundaries to be affected by such proposed transfer of area. The commissioners shall hold a hearing on the petition in accordance with the procedure outlined in subsection (3) above, and the withdrawal and annexation shall be allowed unless protests are presented at the hearing by the owners of 50% or more of the area of the privately owned lands included within either district affected who constitute a majority of the taxpaying freeholders of either district, according to the last completed assessment roll. The withdrawals and annexation shall be allowed only upon a showing of more advantageous proximity and communications with the firefighting facilities of the other district.

(5) In lieu of the detraction procedure set forth in subsection (3), whenever a person owns land adjacent to a city or town and wishes to have that land only annexed to the city or town, the land may be detracted as follows:

(a) The owner shall mail notice to the chairman of the trustees of the fire district or, if none, to the board of county commissioners of his intention to request annexation.

(b) The owner shall attach a copy of this notice of intention to his petition to the municipal governing body requesting annexation.

(c) Following adoption of the annexation order under 11-521, the land is detracted from the fire district.

**History:** En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R. C. M. 1921; amd. Sec. 1, Ch. 15, L. 1931; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977.

#### Amendments

The 1969 amendment inserted a requirement for notice "by mailing a copy of the notice by first class mail to each freeholder in the district at the address shown in the assessment roll" in subsections (a) and (c).

The 1977 amendment redesignated former subsections (a) through (d) as subsections (1) through (4); deleted "or village" after "unincorporated territory or town" near the beginning of the first sentence of subsection (1); added subsection (5); and made minor changes in phraseology, punctuation and style.

#### Effective Date

Section 2 of Ch. 45, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 20, 1969.

#### Annexation of Rural Fire District Land

Rural fire district land is not subject to annexation as long as the land remains in the rural fire district; however, the land-



owners desiring annexation may petition to have the land withdrawn from the rural fire district, and once the land is withdrawn, annexation may proceed if statu-

tory annexation requirements are met. *Missoula Rural Fire Dist. v. City of Missoula*, — M —, 540 P 2d 958.

**11-2010. (5149) Trustees of fire districts—mutual aid agreements.** (a) and (b). \* \* \* [Same as parent volume.]

(c) The trustees of such fire district may contract with the council of any city or town, or with the trustees of any other fire district established in any unincorporated territory, town or village, which has any boundary line lying within five (5) straight line miles of any boundary line of such district, whether the city or town or other fire district shall lie within the same county or another county, for the extension of fire protection service by the city or town or by such other fire district, to property included within such district, and may agree to pay a reasonable consideration therefor, provided, that the owners of ten per cent (10%) of the taxable value of the property in any such fire district may elect to make such a contract. Likewise, the trustees may contract to permit such fire district's equipment and facilities to be used by the cities, towns, or other fire districts which have any boundary lines lying within five (5) straight line miles of any boundary line of such district. Likewise, the trustees may enter into contracts with public or private parties under which such district fire company may extend fire protection to public or private property lying outside of such district or any other district or city limits, but within five (5) straight line miles of any boundary line of such district, whether such public or private property shall lie within the same county or another county; and such district fire company may use such fire district's equipment and facilities outside of such district in the performance of such contracts. All moneys received from such contracts shall be deposited in the county treasurer's office and credited to the fire district fund holding such contracts.

(d). \* \* \* [Same as parent volume.]

**History:** En. Sec. 1, Ch. 107, L. 1911; amd. Sec. 1, Ch. 19, L. 1921; re-en. Sec. 5149, R. C. M. 1921; amd. Sec. 1, Ch. 130, L. 1925; amd. Sec. 3, Ch. 97, L. 1947; amd. Sec. 2, Ch. 75, L. 1953; amd. Sec. 2, Ch. 77, L. 1959; amd. Sec. 1, Ch. 118, L. 1959; amd. Sec. 1, Ch. 2, L. 1965; amd. Sec. 1, Ch. 333, L. 1969; amd. Sec. 1, Ch. 120, L. 1973.

#### Amendments

The 1969 amendment added the last two sentences to subsection (c).

The 1973 amendment substituted "which has any boundary line lying within five (5) straight line miles of any boundary line" in the first and second sentences of subdivision (c) for "lying within five (5) miles of the farthest limits"; substituted "such a contract" at the end of the first sentence of subdivision (c) for "a contract with the city fire department for

fire protection, or to be included in the fire district protection facilities"; substituted "lying outside of such district or any other district or city limits, but within five (5) straight line miles of any boundary line" in the third sentence of subdivision (c) for "lying more than one (1) mile outside of the district or any other district or city limits, but within five (5) miles of the farthest limits"; and made minor changes in phraseology.

#### Repealing Clause

Section 2 of Ch. 333, Laws 1969 repealed all acts and parts of acts in conflict therewith.

#### Effective Date

Section 3 of Ch. 333, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 13, 1969.



**11-2020. (5155.1) Volunteer Firefighter's Compensation Act.**

Compiler's Notes

Section 3, Ch. 489, Laws 1977, substi-

tuted "Firefighters" in this section for "Firemen's."

**11-2020.1. Definitions.** Unless the context requires otherwise, the following definitions apply in 11-2020 through 11-2031, 11-2020.2, and 11-2024.1:

(1) "Board" means the public employees' retirement board of the public employees' retirement system.

(2) "Division" means the division of workers' compensation of the department of labor and industry.

(3) "Fire company" means a fire company organized in an unincorporated area, town, or village under the laws of the state of Montana.

(4) "Fund" or "volunteer firefighters' fund" means the volunteer firefighters' compensation account in the agency fund.

**History:** En. 11-2020.1 by Sec. 19, Ch. 157, L. 1977; amd. Sec. 1, Ch. 480, L. 1977.

compensation account in the agency fund" at the end of subsection (4) for "compensation earmarked revenue account in the earmarked revenue fund."

**Amendments**

The 1977 amendment substituted "com-

**11-2020.2. Certificate of eligibility.** On or before September 1 of each year, the chief or foreman of every volunteer fire company shall prepare and file with the public employees' retirement system a certificate, subscribed and verified under oath, stating whether or not his company qualified under 11-2023(2)(d) during the preceding fiscal year and listing the full name and residence address of each member of his company who satisfactorily completed 30 hours of instruction during the preceding fiscal year, as required by 11-2023(2)(c). The verified certificate shall be maintained in a permanent file by the public employees' retirement system for the purpose of establishing eligibility for participation in the volunteer firemen's pension plan and shall be open for inspection as a public record.

**History:** En. 11-2020.2 by Sec. 20, Ch. 157, L. 1977.

**11-2022. (5158.3) Disability, death, insurance, and pension benefits.**

(1) Each member of a fire company is entitled to receive compensation for disability incurred while in the performance of his duties as a firefighter when the disability necessitates the services of a physician or surgeon, whether the member is confined or not. The compensation shall equal the amount of the member's necessary and reasonable medical expenses resulting directly from the disability and incurred within 36 months from the date of the injury which caused the disability. The total compensation may not exceed \$25,000.

(2) When an injury incurred in the line of duty results in the loss by amputation of an arm, hand, leg, or foot, the enucleation of an eye, or the loss of any natural teeth, the division shall order that an artificial member be furnished. The expense of furnishing an artificial member may not exceed \$1,500. The artificial member so furnished shall be replaced every 5 years, if necessary.

(3) To aid in defraying the funeral expenses of a firefighter covered

under this act whose death occurs in the line of duty, an amount not to exceed the actual necessary and reasonable expenses or \$1,500, whichever is less, shall be allowed.

(4) To encourage and aid volunteer fire companies to maintain group insurance for benefits on account of the death of or injury incurred by members while in the performance of duties as volunteer firefighters, \$75 per year for each mobile unit of firefighting equipment, not exceeding two units for any one company, shall be paid by the division from the volunteer firefighters' fund to each volunteer fire company maintaining such insurance or to the organization or agency maintaining such insurance for a volunteer fire company.

(5) (a) Each person who meets the requirements set forth in 11-2023(2) or, in the case of a beneficiary, 11-2025(3) and who has completed and filed a claim as provided in 11-2024(2) is entitled to participate in the volunteer firefighters' pension plan and to receive payments as provided in this subsection (5).

(b) The payments shall be computed each year in the following manner:

(i) Whenever at the close of business on the last day of a fiscal year there is a balance in the volunteer firefighters' fund in excess of \$1 million, the division shall set aside and pay over to the public employees' retirement system the smaller of the amount in excess of \$1 million and an amount equal to 95% of the increase of the balance over the balance at the end of the preceding fiscal year for the payment by the public employees' retirement system of pensions to qualified claimants during the immediately succeeding fiscal year. The amount to be paid to each qualifying claimant shall be determined by dividing the amount set aside by the number of claimants qualifying to participate in the pension plan at the beginning of such succeeding fiscal year.

(ii) The total pension payable to a qualified claimant under this subsection (5) may not exceed \$100 per month, and the amount to be set aside from the volunteer firefighters' fund may not exceed the amount necessary to pay the maximum of \$100 per month to each claimant qualified as of the beginning of the fiscal year during which the payments are to be made.

(iii) For the purpose of computation and payment of benefits under this subsection (5), if children of a volunteer firefighter become eligible for benefits, all the children of the volunteer firefighter shall be treated collectively as one claimant.

(c) If the amount set aside is sufficient to pay each qualified claimant at least \$20 per month throughout the succeeding fiscal year, the pension shall be paid monthly on or before the last day of each month. If the amount set aside is not sufficient to pay each qualified claimant at least \$20 per month, each qualified claimant's full pension for that year shall be paid to him in one lump payment on or before December 15 of that year.

(d) The fiscal year for the purposes of this act begins on July 1 and ends on June 30 of each year.

History: En. Sec. 3, Ch. 65, L. 1935; 1, Ch. 118, L. 1965; amd. Sec. 3, Ch. 160, amd. Sec. 1, Ch. 37, L. 1957; amd. Sec. L. 1967; amd. Sec. 1, Ch. 80, L. 1971;



amd. Sec. 1, Ch. 199, L. 1973; amd. Sec. 1, Ch. 69, L. 1975; amd. Sec. 1, Ch. 90, L. 1977; amd. Sec. 1, Ch. 95, L. 1977; amd. Sec. 21, Ch. 157, L. 1977; amd. Sec. 2, Ch. 480, L. 1977.

### Compiler's Notes

This section was amended four times in 1977 by Chs. 90, 95, 157, and 480. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by all amendments.

### Amendments

The 1971 amendment removed from the first sentence of subsection 5 a requirement that the volunteer fireman himself complete and file the claim; substituted "as provided in this act" for "throughout the remainder of his lifetime" in the latter part of the first sentence of subsection 5; substituted "claimant" for "volunteer fireman" throughout subsection 5; inserted the next to last sentence in subsection 5; and made minor changes in phraseology.

The 1973 amendment substituted "the smaller of such amount in excess of one million dollars (\$1,000,000), or an amount equal to ninety-five per cent (95%) of the increase of said account balance over the account balance at the end of the preceding fiscal year," for "said excess amount"; increased the maximum pension from twenty-five to fifty dollars per month; and made minor changes in style and phraseology.

The 1975 amendment set a general maximum limit for reasonable and necessary medical expenses in place of the former specific limits for various types of confinements and injuries in subsections 1 and 2; increased the funeral expense payment from \$250 to the "actual necessary and reasonable expenses, or the sum of one thousand five hundred dollars (\$1,500), whichever is less"; and increased the insurance premium aid from \$50 to \$75. For prior version, see parent volume.

Chapter 90, Laws of 1977, substituted "\$100" for "fifty dollars (\$50)" in two places in subsection (5).

Chapter 95, Laws of 1977, substituted "volunteer fireman's compensation account in the agency fund" in two places for "volunteer fireman's compensation earmarked revenue account in the earmarked revenue fund."

Chapter 157, Laws of 1977, deleted "organized in an unincorporated area, town or village under the laws of this state" after "fire company" near the beginning of subsection (1); substituted "division" for "board" in the first sentence of subsection (2); substituted references to volunteer fire companies in four places

in subsection (4) for references to volunteer fire departments; inserted "by the division from the volunteer firemen's fund" near the middle of subsection (4); divided subsection (5) into subsections (5)(a) through (5)(d); substituted "person" for "volunteer fireman" near the beginning of subsection (5); substituted "or, in the case of a beneficiary 11-2025(3) and who has completed and filed a claim as provided in 11-2024(2)" in the middle of subsection (5)(a) for "and then if the claim provided for under subparagraph two (2) of section 11-2024 shall be completed and filed, the claimant"; substituted "and to receive payments as provided in this subsection (5)" at the end of subsection (5)(a) for "as provided in this act, and to receive payments thereunder"; inserted "The payments shall be" at the beginning of subsection (5)(b); inserted the designation "(i)" near the beginning of subsection (5)(b); substituted "volunteer firemen's fund" near the beginning of subsection (5)(b) for "volunteer fireman's compensation earmarked revenue account in the earmarked revenue fund"; substituted "division" near the beginning of subsection (5)(b) for "industrial accident board"; added subsections (5)(b)(ii) and (5)(b)(iii); deleted "provided, however, that in any event the total pension payable hereunder to any qualified claimant shall not exceed the sum of fifty dollars (\$50) per month, and the amount to be set aside hereunder from the volunteer fireman's compensation earmarked revenue account in the earmarked revenue fund at the beginning of any fiscal year for the funding of such pensions shall not in any event exceed the amount necessary to pay such maximum of fifty dollars (\$50) per month to each claimant qualified as of the beginning of such fiscal year. For the purpose of computation and payment of benefits under this act, if children of any volunteer fireman shall become eligible for benefits hereunder, then all children of such volunteer fireman shall be treated collectively as one (1) claimant" at the end of subsection (5)(c); and made minor changes in phraseology, punctuation and style.

Chapter 480, Laws of 1977, substituted "volunteer firemen's fund" for "volunteer fireman's compensation account in the agency fund."

### Implementation of Board Name Change

Section 4, Ch. 132, Laws 1977, provides: "All references to 'board' or 'board of administration' contained in Title 68 and all references to 'board of administration' contained in Title 11, chapter 20; Title 31, chapter 2; and Title 59, chapter 11, mean the public employees' retirement board provided for in 82A-210."



**Effective Dates**

Section 2 of Ch. 69, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved March 18, 1975.

Section 2 of Ch. 90, Laws 1977 provided the act should be in effect from and after its passage and approval. Approved March 25, 1977.

**11-2023. (5158.4) Qualification for compensation.** (1) In order to qualify for benefits under subsections (1), (2), and (3) of 11-2022, a firefighter must, at the time the injury or sickness for which benefits are claimed was incurred or, in the case of a claim under 11-2022(3), at the time of death, have been an enrolled active member of a fire company.

(2) In order to qualify for participation in the volunteer firefighters' pension plan under 11-2022(5), a volunteer firefighter must meet each of the following requirements:

(a) (i) To qualify for full participation, he must have completed a total of at least 20 years' service as an active volunteer firefighter and as an active member of a qualified volunteer fire company.

(ii) If a firefighter is prevented from completing at least 20 years' service by dissolution or discontinuance of his volunteer fire company, personal relocation due to transfer or loss of employment, personal disability, or any other factor beyond his reasonable control, he may qualify for partial participation if he has completed at least 10 years' service. In that event, he is eligible for only a proportion of the benefits specified in 11-2022(5), determined by multiplying the benefits by a fraction, the numerator of which is the number of years of active service completed and the denominator of which is 20.

(iii) The years of active service are cumulative and need not be continuous. The service need not be acquired with one single fire company but may be a total of separate periods of active service with different fire companies in different fire districts.

(iv) Effective March 1, 1965, the annual period of service for the purpose of this act is the fiscal year. No fractional part of any year may count toward the service requirement, and to receive credit for any particular year, a volunteer firefighter must serve with one particular volunteer fire company throughout that entire fiscal year.

(b) He must have attained the age of 55, but he need not be an active volunteer firefighter or an active member of any volunteer fire company when he reaches that age.

(c) During each of the years for which he claims credit under subsection (2)(a), he must have completed a minimum of 30 hours of instruction in matters pertaining to firefighting under a program formulated and supervised by the chief or foreman of his volunteer fire company.

(d) Effective July 1, 1965, no volunteer firefighter may receive credit for any year of membership in a volunteer fire company unless, throughout the year:

(i) the company maintained firefighting equipment in serviceable condition of a value of \$2,500 or more; and

(ii) the company or the fire district served by it was rated in class 5, 6, 7, 8, 9, or 10 by the board of fire underwriters for the purpose of fire insurance premium rates.

(e) He must have ceased to be an active member of any volunteer fire company, and, if he applies for and receives pension benefits hereunder, he will not thereafter be eligible to become an active member of any volunteer fire company.

(3) (a) A volunteer firefighter who was an active member of a volunteer fire company on March 1, 1965, shall receive credit for his service under subsection (2)(a) to the extent of 1 year's credit for each 2 years' service completed by him prior to July 1, 1965, as an active member of any volunteer fire company or companies. Credit for such prior service shall be given whether or not the volunteer fire company or companies with which the service was rendered satisfied the requirements of subsection (2)(d) and whether or not the individual volunteer firefighter satisfied the requirements of subsection (2)(c) during his prior service. No more than 10 years' credit may be allowed any volunteer firefighter for such prior service.

(b) For the purpose of establishing prior service credit, the chief or foreman of each volunteer fire company shall prepare and file with the public employees' retirement system a certificate, subscribed and verified under oath, listing the names and residence addresses of each of the members of his volunteer fire company who qualify for 1 or more years' credit for prior service and stating the number of years of credit to which each is entitled.

(c) For the purpose of establishing prior service under this section, the chief or foreman or former chief or foreman of each volunteer fire company shall on or before September 1, 1975, file with the public employees' retirement system a certificate, subscribed and verified under oath, listing the names and residence addresses of each of the members of his volunteer fire company who qualify for 1 or more years of credit and stating the number of years of credit to which each is entitled. In addition, the reporting chief shall include in his report a sworn statement as to the reason for the delayed filing. The acceptance of this report will be subject to the approval of the board.

(d) If it is not possible to secure a report from the chief or former chief, an individual may receive credit for service upon proper documentation acceptable to the board.

**History:** En. Sec. 4, Ch. 65, L. 1935; amd. Sec. 2, Ch. 118, L. 1965; amd. Sec. 1, Ch. 161, L. 1967; amd. Sec. 1, Ch. 46, L. 1969; amd. Sec. 2, Ch. 80, L. 1971; amd. Sec. 2, Ch. 199, L. 1973; amd. Sec. 1, Ch. 48, L. 1975; amd. Sec. 1, Ch. 233, L. 1975; amd. Sec. 22, Ch. 157, L. 1977.

#### Amendments

The 1969 amendment inserted "area" before "town or village" in subsection (1); and substituted "two thousand five hundred dollars (\$2,500)" for "seven hundred fifty dollars (\$750)" and added class "ten (10)" in subdivision (2)(A).

The 1971 amendment reduced the service requirements specified in subdivision (2)(A) from twenty to ten years; inserted in subdivisions (2)(A) and (2)(B) identical provisos reading: "provided, that

in the case of any volunteer fireman having completed at least ten (10) years' but less than twenty (20) years' service as an active volunteer fireman, then the claimant hereunder shall be eligible for only a proportion of the benefits specified in subparagraph five (5) of section 11-2022, determined by multiplying such specified benefits by a fraction, the numerator of which shall be the number of years active service completed, and the denominator of which shall be twenty (20)"; and made minor changes in phraseology.

The 1973 amendment divided subdivision (2)(A) into clauses with Roman numerals; inserted "To qualify for participation" at the beginning of clause (2)(A)(I); increased the service required by clause (2)(A)(I) from ten to



twenty years; substituted clause (2) (A) (II) for the proviso inserted in subdivision (2) (A) by the 1971 amendment; deleted from subdivision (2) (B) the proviso added by the 1971 amendment; divided subdivision (2) (C) into subdivisions (2) (C) and (2) (F); inserted new subdivisions (2) (D) and (2) (E); and made minor changes in style.

Chapter 48, Laws of 1975, deleted former subdivision (2)(E) which read: "He must not be eligible for benefits under any fire department relief association organized in any incorporated area"; and redesignated former subdivision (2)(F) as (2)(E).

Chapter 233, Laws of 1975, deleted from the last sentence of subdivision (2)(E) "on or before September 1, 1963" before "prepare and file"; and added subdivision (2)(F).

The 1977 amendment inserted subsection (2)(d); redesignated former subsection (2)(D) as subsection (2)(e); redesignated former subsection (2)(E) as subsections (3)(a) and (3)(b); redesignated the first

paragraph of former subsection (2)(F) as subsection (3)(c) and the second paragraph as subsection (3)(d); deleted from subsection (3)(c) a provision that volunteer firemen serving in organized fire companies in unincorporated areas should receive one year's credit toward the service requirement (up to 10 years total credit) for every two years' actual service prior to July 1, 1965; inserted in subsection (3)(c) a requirement that the certificate provided for state the number of years of service credit to which each member of the company is entitled; inserted "or foreman" twice near the beginning of the first sentence of subsection (3)(c); substituted references to "March 1, 1965" for references to "the effective date of this section" throughout; and made minor changes in phraseology, punctuation and style.

#### Effective Date

Section 3 of Ch. 199, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 7, 1973.

**11-2024. (5158.5) Procedure for claiming benefits.** (1) (a) A firefighter claiming benefits under subsection (1) or (2) of 11-2022 must file his claim with the division on a form to be provided therefor. The claim must be verified by the claimant, the attending physician or surgeon and nurse, if any, and the person in charge of the hospital, if the claimant was confined. The claim must be filed with the division within 1 year from the date of disability.

(b) The claim must contain:

(i) the name and address of the claimant;

(ii) the date, place, and manner of incurring of disability;

(iii) the name and address of the attending physician or surgeon and/or nurse, if any;

(iv) the dates of confinement, if confined, or, if not confined, the dates of attendance by a physician or surgeon and the dates of attendance by a nurse;

(v) the affidavit of the attending physician or surgeon as to the nature of the disability, the number and dates of visits, and the charges;

(vi) if confined in a hospital, the affidavit of a person in charge stating the nature of the disability, the dates of confinement, and the expenses incurred while so confined;

(vii) the affidavit of the chief or secretary of the fire company stating that the fire company was duly organized under the laws of Montana in an unincorporated town or village, that the claimant was, at the date of disability, an active enrolled member of the company, and that the disability was incurred in the line of duty;

(viii) the affidavit of the nurse stating the nature of the disability, the dates of attendance, and the charges for services.



(2) (a) Anyone claiming eligibility under the volunteer firefighters' pension plan must file his claim with the public employees' retirement system upon a form to be provided therefor by that system. The claim must be filed on or before May 1 of the calendar year in which the claimant seeks to qualify for participation in the pension plan.

(b) The claim must contain:

(i) the name, address, and date of birth of the claimant and of the volunteer firefighter, if he is not the claimant;

(ii) the fiscal year during which eligibility will commence; and

(iii) the years during which service as a volunteer firefighter was rendered and the names of the volunteer fire companies with which the service was rendered.

(c) The public employees' retirement system may require such proof of age and service as it may consider proper, but it must accept a certificate filed under 11-2020.2 or 11-2023(3) as prima facie proof of such service.

(d) If the claim is properly filed and the claimant is found by the public employees' retirement system to be properly qualified to participate in the volunteer firefighters' pension plan, the name of the claimant shall be added to the list of qualified persons and the claimant will then be entitled to participate in the volunteer firefighters' pension plan as of the fiscal year beginning July 1 next following the filing of the claim.

**History:** En. Sec. 5, Ch. 65, L. 1935; amd. Sec. 3, Ch. 118, L. 1965; amd. Sec. 4, Ch. 160, L. 1967; amd. Sec. 3, Ch. 80, L. 1971; amd. Sec. 23, Ch. 157, L. 1977.

#### **Amendments**

The 1971 amendment substituted "claimant" or "person" for "volunteer fireman" in two places in subsection 2; inserted "and of the volunteer fireman if other than the claimant" after "date of birth of the claimant" in the first sentence of subsection 2; and made minor changes in phraseology and style.

The 1977 amendment substituted the reference to "subsection (1) or (2) of 11-2202" for one to "subparagraphs one (1), two (2), three (3) or four (4), of section 11-2202" near the beginning of the section; substituted references to the "division" for references to the "industrial accident board" throughout the section; inserted subdivision designations under subsections (1) and (2); and made minor changes in phraseology, punctuation and style.

**11-2024.1. Procedure for claiming death benefit.** Anyone claiming the benefit provided for in 11-2022(3) must file his claim with the division upon a form to be provided therefor by the division, in accordance with such rules as the division may make.

**History:** En. 11-2024.1 by Sec. 24, Ch. 157, L. 1977.

**11-2025. (5158.6) Payment of benefits.** (1) When a claim under subsections (1), (2), or (3) of 11-2022 is received by the division and is found to be in compliance with 11-2024(1) or, in the case of a claim under 11-2022(3), with 11-2024.1, the division must order the allowance thereof and pay it by warrants drawn upon the volunteer firefighters' fund to the order of the attending physician or surgeon, attending nurse, and hospital or the provider of funeral services, as applicable.

(2) All payments under the volunteer firefighters' pension plan must be approved by the public employees' retirement system and paid by warrants drawn upon the agency fund, payable to the order of the individ-

ual qualified volunteer firefighter or the beneficiary as provided in subsection (3).

(3) The full or partial participation pension shall be paid or continue to be paid to the surviving spouse, if any, until such spouse's death or remarriage or, if the deceased volunteer firefighter left no surviving spouse but left a child or children under the age of 18, to the guardian or other person having custody of the children until the youngest child reaches the age of 18. The pension shall be paid in each of the following circumstances:

(a) the death of a volunteer firefighter who has not reached the age of 55 but who has otherwise qualified for full participation;

(b) the death after February 27, 1971, of a volunteer firefighter who has not reached the age of 55 but who has otherwise qualified for partial participation;

(c) the death of a volunteer firefighter after qualifying for full participation but before receiving payments totaling at least \$2,000; or

(d) the death of a volunteer firefighter after February 27, 1971, and after he has qualified for partial participation but before he has received payments totaling the proportion of \$2,000 determined under the formula prescribed in 11-2023(2)(a)(ii).

(4) Payments under subsection (3) shall terminate, in the case of a full participation pension, when a total of \$2,000 has been paid upon the pension, including any payments made to the volunteer firefighter before his death, or, in the case of a partial participation pension, when a total of the proportion of \$2,000 determined under the formula prescribed in 11-2023(2)(a)(ii) has been paid upon the pension, including any payments made to the volunteer firefighter before his death.

(5) If a deceased volunteer firefighter leaves neither a surviving spouse nor a child under the age of 18, his pension shall terminate at the end of the month prior to the month in which his death occurs.

**History:** En. Sec. 6, Ch. 65, L. 1935; amd. Sec. 192, Ch. 147, L. 1963; amd. Sec. 4, Ch. 118, L. 1965; amd. Sec. 4, Ch. 80, L. 1971; amd. Sec. 1, Ch. 168, L. 1974; amd. Sec. 7, Ch. 535, L. 1975; amd. Sec. 2, Ch. 95, L. 1977; amd. Sec. 25, Ch. 157, L. 1977.

#### Compiler's Notes

This section was amended twice in 1977, once by Ch. 95 and once by Ch. 157. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

#### Amendments

The 1971 amendment completely rewrote the first proviso to subsection 2, for previous text of which see parent volume; inserted the second proviso in subsection 2; deleted from the end of subsection 2 a clause reading "and in any event such pension shall terminate no later than the end of the fiscal year in which death

occurs"; and made minor changes in phraseology and style.

The 1974 amendment inserted "but who has otherwise qualified for full participation hereunder \* \* \* but who has otherwise qualified for partial participation hereunder" in the proviso in the first sentence of subsection 2; substituted "full participation" for "payments" in the first sentence of subsection 2 before the first reference to \$2,000; inserted "or in the event of the death of any such volunteer fireman after February 27, 1971 \* \* \* under the formula set forth in section 11-2023 (2)(A) (II)" in the first sentence of subsection 2; inserted "full or partial participation" before "pension" in two places toward the end of the first sentence of subsection 2; inserted "in the case of a full participation pension" before "when a total of two thousand" in the second sentence of subsection 2; inserted "or in the case of a partial participation pension, \* \* \* including any payments made to the volunteer fireman before his death" at the end of



the second sentence of subsection 2; and made minor changes in phraseology.

The 1975 amendment substituted "surviving spouse" or "such spouse" for "widow" throughout subsection 2; substituted "after qualifying for full participation hereunder but before receiving payments" in the middle of the first sentence of subsection 2 for "after he has qualified \* \* \* before he has received payments"; and made a minor change in phraseology.

Chapter 95, Laws of 1977, substituted "agency fund" for "earmarked revenue fund" in two places.

Chapter 157, Laws of 1977, deleted "and four (4)" after "(3)" in subsection (1); substituted references to the division in two places in subsection (1) for references to the industrial accident board; inserted "or, in the case of a claim under 11-2022(3), with 11-2024.1" in subsection (1); added "or the provider of funeral services, as applicable" at the end of subsection (1); added "or the beneficiary as provided in subsection (3)" at the end of subsec-

tion (2); inserted the introductory paragraph of subsection (3); deleted language at the end of subdivision (3)(d) providing for pension payments to a surviving spouse from the earmarked revenue fund until such spouse's death or remarriage, or to the person having custody of children under eighteen; and made minor changes in phraseology, punctuation and style.

#### Repealing Clause

Section 5 of Ch. 80, Laws 1971 repealed all acts and parts of acts in conflict therewith.

#### Effective Dates

Section 6 of Ch. 80, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 27, 1971.

Section 2 of Ch. 168, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 11, 1974.

**11-2026. (5158.7) Administration of act.** (1) Except as provided in subsection (2), the division shall administer the Volunteer Firefighters' Compensation Act, and all payments made under 11-2022(4) and 11-2025(1) shall be made by warrants drawn by the division.

(2) The board shall administer the volunteer firefighters' pension plan, and all payments made under 11-2025(2) and (3) shall be made by warrants drawn by the public employees' retirement system. Annually, on or before the 15th day after the close of the fiscal year, the division shall notify the board in writing of the balance remaining in the volunteer firefighters' fund as of the end of the fiscal year.

**History:** En. Sec. 7, Ch. 65, L. 1935; amd. Sec. 193, Ch. 147, L. 1963; amd. Sec. 1, Ch. 160, L. 1967; amd. Sec. 26, Ch. 157, L. 1977.

#### Amendments

The 1977 amendment inserted the ref-

erence to 11-2022(4) in subsection (1); inserted the reference to subsection (3) of 11-2025 in subsection (2); substituted references to the "division" for references to the "industrial accident board"; and made minor changes in phraseology and style.

**11-2027. (5158.8) Rules to be made by division and board—office supplies.** (1) The division and the board shall make such rules as each considers necessary and advisable in its administration of the Volunteer Firefighters' Compensation Act, not inconsistent with the provisions thereof.

(2) Necessary expenses of the division and the public employees' retirement system for office supplies, stationery, and forms in connection with the administration of the Volunteer Firefighters' Compensation Act are a charge against the fund. The public employees' retirement system shall draw from the fund through warrants executed by the division upon the request of the public employees' retirement system, at such intervals as the board considers proper.



History: En. Sec. 8, Ch. 65, L. 1935; amd. Sec. 2, Ch. 160, L. 1967; amd. Sec. 27, Ch. 157, L. 1977.

#### Amendments

The 1977 amendment inserted the subsection designations; deleted from the end of subsection (1) a sentence reading "The board of administration of the public employees' retirement system shall make such rules and regulations as it deems necessary and advisable in its administration of the volunteer firemen's pension plan, not inconsistent with the provisions hereof"; substituted references to the "divi-

sion and the board of administration" in subsection (1) and the "division and the public employees' retirement system" in subsection (2), for references to the "industrial accident board"; deleted from the beginning of subsection (2) language providing "Necessary expenses of the public employees' retirement system for office supplies, stationary and forms in connection with its administration of the volunteer firemen's pension plan shall be a charge against the fund, and shall be drawn from said fund by the public employees' retirement system"; and made minor changes in phraseology and style.

**11-2028. (5158.9) Earnings to be part of moneys.** All earnings made by moneys received under section 11-2030 by reason of interest paid for the deposit thereof, or otherwise, shall be credited to and become a part of such moneys.

History: En. Sec. 9, Ch. 65, L. 1935; amd. Sec. 194, Ch. 147, L. 1963; amd. Sec. 3, Ch. 95, L. 1977.

#### Amendments

The 1977 amendment substituted "received under" for "earmarked by" before "section 11-2030."

**11-2029. (5158.10) Reports of division and public employees' retirement system.** (1) The division shall, at the time specified in 92-842 for making the report therein required, make a report to the governor covering the operations and proceedings for the preceding fiscal year relative to its administration of the Volunteer Firefighters' Compensation Act, with such suggestions or recommendations as it may consider of value for public information.

(2) The public employees' retirement system shall, not later than November 1 of each year, make a report to the governor covering the operations and proceedings for the prior fiscal year relative to its administration of the volunteer firefighters' pension plan, with such suggestions or recommendations as it may consider of value for public information.

(3) Copies of all such reports shall be made available by the division or the public employees' retirement system to the chief or other representative of any volunteer fire company or companies which may at any time request them.

History: En. Sec. 10, Ch. 65, L. 1935; amd. Sec. 5, Ch. 118, L. 1965; amd. Sec. 1, Ch. 159, L. 1967; amd. Sec. 28, Ch. 157, L. 1977.

#### Amendments

The 1977 amendment substituted "division" for "industrial accident board" near the beginning of subsections (1) and (3); and made minor changes in phraseology, punctuation and style.

**11-2030. (5158.11) Fire insurance premium tax to be paid into fund.** The state auditor and ex officio commissioner of insurance shall annually deposit in the volunteer firefighters' fund a sum equivalent to 5% of the premium taxes collected from insurers authorized to effect insurance against risks enumerated in 11-1919, computed after the amounts provided for by 11-1919 have first been deducted. The moneys shall be used for the

payment of claims and administrative costs as provided in 11-2022(4), 11-2025, 11-2026, and 11-2027.

**History:** En. Sec. 11, Ch. 65, L. 1935; amd. Sec. 1, Ch. 125, L. 1947; amd. Sec. 1, Ch. 164, L. 1959; amd. Sec. 191, Ch. 147, L. 1963; amd. Sec. 2, Ch. 264, L. 1975; amd. Sec. 4, Ch. 95, L. 1977; amd. Sec. 29, Ch. 157, L. 1977; amd. Sec. 3, Ch. 480, L. 1977.

#### Compiler's Notes

This section was amended three times in 1977 by Chs. 95, 157, and 480. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by all amendments.

#### Amendments

The 1975 amendment deleted "subsec-

tion 2 of" before the first reference to section 11-1919; and made a minor change in phraseology.

Chapter 95, Laws of 1977, substituted "agency fund" for "earmarked revenue fund."

Chapter 157, Laws of 1977, substituted "volunteer firemen's fund" for "earmarked revenue fund"; added the references to 11-2022(4) and 11-2027; and made minor changes in style and phraseology.

Chapter 480, Laws of 1977, substituted "volunteer firemen's fund" for "agency fund."

#### Repealing Clause

Section 3, Ch. 264, Laws 1975 read "Section 11-1918, R. C. M. 1947, is repealed."

**11-2031. (5158.12) Penalty for false statements or claims.** A person required to make a statement or affidavit by 11-2020 through 11-2031, 11-2020.1, 11-2020.2, and 11-2024.1 who willfully falsifies such statement or affidavit and a person who files a false claim under 11-2020 through 11-2031, 11-2020.1, 11-2020.2, and 11-2024.1 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not exceeding \$500 or imprisonment not exceeding 6 months, or both.

**History:** En. Sec. 12, Ch. 65, L. 1935; amd. Sec. 30, Ch. 157, L. 1977.

#### Amendments

The 1977 amendment substituted the

references to "11-2020 through 11-2031, 11-2020.1, 11-2020.2, and 11-2024.1" for "hereunder" throughout the section, and made minor changes in phraseology, punctuation and style.

## CHAPTER 22—SPECIAL IMPROVEMENT DISTRICTS

### Section

- 11-2201. Special improvements—powers of city council.
- 11-2205. Assessment of extended district including lots not fronting on improvement.
- 11-2206. Protests against proposed work.
- 11-2209. Bid for work and award of contract.
- 11-2213. Bond of contractor.
- 11-2214. Methods of payments of improvements.
- 11-2214.2. Assessments and bonds for pedestrian malls or off-street parking.
- 11-2216. Sewer systems.
- 11-2217. Cities and towns may establish sewage treatment and disposal plant systems and water supply and distribution systems.
- 11-2218. May issue revenue bonds—sinking fund—refunding revenue bonds.
- 11-2226. Construction of sidewalks, curbs and gutters without formation of special improvement district.
- 11-2226.1. Construction or replacement of alley approaches without formation of special improvement district.
- 11-2227. Interest on assessments.
- 11-2231. Form of bonds and warrants.
- 11-2249. Bonds and warrants—interest—redemption.
- 11-2269. Special improvement district revolving fund.
- 11-2270. Transfers from general fund and tax levy for revolving fund.
- 11-2271. Loans from revolving fund for paying improvement district bonds and warrants.
- 11-2272. Lien for loans from revolving fund—surplus district funds transferred to revolving fund, investment of funds.

- 11-2275. Creation and maintenance of fund.  
11-2277. Determination of provisions of bonds—maturity—interest—form.  
11-2289. Corner lots.  
11-2290. Allocation of costs of nonfrontage sides.

**11-2201. (5225) Special improvements—powers of city council. (1)**  
All streets, alleys, places, or courts in the municipalities of this state, now open or dedicated or which may hereafter be opened or dedicated to public use, are open public streets, alleys, places, or courts for the purposes of this chapter, and the city council of each municipality may establish and change the grades of the streets, alleys, places, or courts and fix the width thereof and may acquire private property for right-of-way and order to be done any of the work mentioned in this chapter under the proceedings hereinafter described.

(2) When the public interest or convenience requires, the governing body of a municipality may:

- (a) establish pedestrian malls;
- (b) prohibit, in whole or in part, vehicular traffic on a pedestrian mall;
- (c) pay, from general funds of the municipality or other available moneys or from the proceeds of assessments levied on lands benefited by the establishment of a pedestrian mall, the damages, if any, allowed or awarded to any property owner by reason of the establishment of a pedestrian mall. The resolution of intention must contain a statement that an assessment will be levied to pay the whole or a stated portion of such damages, if any, allowed or awarded to any property owner by reason of the establishment of such pedestrian mall;

(d) construct improvements on public streets that have been or will be established as a pedestrian mall, including but not limited to paving, sidewalks, curbs, sewers, covered walkways or areas, air conditioning, drainage works, street lighting facilities, fire protection facilities, flood protection facilities, water distribution facilities, vehicular parking areas, retaining walls, landscaping, tree planting, statuary, fountains, decorative structures, benches, rest rooms, child care facilities, display facilities, information booths, public assembly facilities, and other structures, works, or improvements necessary or convenient to serve members of the public using such pedestrian mall, including the reconstruction or relocation of existing municipally owned works, improvements, or facilities on such streets. The improvements or structures may be attached to abutting private buildings or structures, provided that the improvements or structures are located on public property.

(3) An improvement district may also be formed for the sole purpose of operating, maintaining, repairing, and improving pedestrian malls, off-street parking facilities, and parkings and parkways.

(4) Subject to the powers granted and the limitations contained in this section, the powers and duties of the municipality and the procedure to be followed are as provided in this chapter for other types of special improvement districts.

(5) If a petition for the formation of an improvement district under the provisions of this section is presented to the governing body purporting



to be signed by all of the real property owners in the proposed district, exclusive of mortgagees and other lien holders, the governing body, after verifying such ownership and making a finding of the fact, shall adopt a resolution of intention to order the improvement as provided in 11-2204 and shall have immediate jurisdiction to adopt the resolution ordering the improvement pursuant to the following provisions, without the necessity of the publication and posting of the resolution of intention provided for in 11-2204.

(6) The governing body shall make annual statements and estimates of the expenses of the district, which shall be provided for by the levy and collection of ad valorem taxes upon the taxable value of all the real and personal property in the district, shall publish notice thereof, and shall have hearings on the statements and estimates and adopt them as provided for incorporated cities and towns by 11-2204 and 11-2206. The governing body, on or before the second Monday in August of each year, shall fix, levy, and assess the amount to be raised by ad valorem taxes upon all of the property of the district. All statutes providing for the levy and collection of state and county taxes, including the collection of delinquent taxes and sale of property for nonpayment of taxes, shall be applicable to the district taxes provided for under this section.

(7) An improvement district formed for the purposes of establishing a pedestrian mall or off-street parking may be financed in accordance with the provisions of 11-2214 and in accordance with the methods of financing set forth for the construction of water or sewer systems as set forth in 11-2218.

(8) The governing body may create special lighting districts on any street or streets or public highway for the purposes of lighting them and assess the costs for installation and maintenance to property abutting thereto and collect the costs by special assessment against the property.

(9) Further, the city or town council may make assessments in the manner provided in 11-2245 on property abutting the street or highway and lying outside the boundaries of the city or town, as long as that portion of the street or public highway to be lighted is adjacent to the boundary line of the city or town, lies partially within the city or town, or extends from one point within the city or town to another point within the city or town.

**History:** En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R. C. M. 1921; amd. Sec. 1, Ch. 136, L. 1967; amd. Ch. 280, L. 1971; amd. Sec. 28, Ch. 566, L. 1977.

#### **Amendments**

The 1971 amendment added subdivision (5); and made a minor change in style.

The 1977 amendment designated the first two paragraphs as subsections (1) and (2); redesignated former subdivisions (1) through (4) as subdivisions (2)(a) through (2)(d); deleted "of any kind or

nature necessary or convenient to the operation of such streets as a pedestrian mall" after "improvements" near the beginning of subdivision (2)(d); redesignated former subdivisions (a) through (e) as subsections (3) through (7); substituted "taxable value" in the first sentence of subsection (6) for "assessed value"; redesignated subdivision (5) as subsection (8); designated the former last paragraph as subsection (9); and made minor changes in phraseology, punctuation and style.

**11-2205. (5228). Assessment of extended district including lots not fronting on improvement.** Whenever the contemplated work of improve-

ment, in the opinion of the city council, is of more than local or ordinary public benefit or whenever, according to estimates furnished by the city engineer, the total estimated costs and expenses thereof would exceed 1/5 of the total taxable value of the lots and lands fronting upon said proposed work or improvement according to the valuation fixed by the last assessment roll, the city council may charge the expenses of the work or improvement to an extended district that may include other lots not fronting on the improvement and which the city council in its resolution of intention declares to be the district benefited by the work or improvements.

**History:** En. Sec. 4, Ch. 89, L. 1913; re-en. Sec. 5228, R. C. M. 1921; amd. Sec. 1, Ch. 135, L. 1923; amd. Sec. 1, Ch. 150, L. 1929; amd. Sec. 29, Ch. 566, L. 1977.

#### Amendments

The 1977 amendment substituted "1/5 of the total taxable value of the lots and lands" for "1/2 of the total assessed value

of the lots and lands assessed, if assessed upon the lots or lands"; deleted "whereon it was assessed for taxes for municipal purposes" after "assessment roll"; deleted "and to be assessed to pay the costs and expenses thereof" at the end of the section; and made minor changes in phraseology and punctuation.

**11-2206. (5229) Protests against proposed work. (1).** \* \* \* [Same as parent volume.]

(2) At the next regular meeting of the city or town council or commission after the expiration of the time within which said protest may be so made, the city or town council or commission shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive; provided, however, that, except as hereinafter provided, when the protest is against the proposed work, and the cost thereof is to be assessed against property fronting thereon, and the city or town council or commission finds that such protest is made by the owners of more than fifty per cent of the property fronting on the proposed work, or when the protest is against the proposed work, and the cost thereof is to be assessed upon the property within an extended district, and the city or town council or commission finds that such protest is made by the owners of more than fifty per cent of the area of the property to be assessed for said improvements, no further proceedings shall be taken for a period of six months from the date when said sufficient protest shall have been received by said clerk of the city or town council or commission; provided, however, that when the improvement proposed is the paving, with necessary incidentals, of not more than one (1) cross block, to connect with streets or avenues already paved for a continuous distance of three (3) blocks or more running (at) a right angle, or substantially so, with the single cross block so proposed to be paved, in such case the city or town council or commission shall have the right to overrule any and all objections and pave the proposed block with gravel and oil surface; and provided, too, that in case the improvement is the construction of a sanitary sewer such protest may be overruled by an affirmative vote of a majority of the members of the city or town council or commission; unless such protest is made by the owners of more than seventy-five per cent of the property affected as herein provided, in which event the protest must be sustained as to the construction of such sanitary sewer.

## (3). \* \* \* [Same as parent volume.]

**History:** En. Sec. 5, Ch. 89, L. 1913; amd. Sec. 3, Ch. 142, L. 1915; re-en. Sec. 5229, R. C. M. 1921; amd. Sec. 2, Ch. 135, L. 1923; amd. Sec. 1, Ch. 36, L. 1939; amd. Sec. 1, Ch. 149, L. 1969.

**Amendments**

The 1969 amendment substituted "fifty

per cent" for "forty per cent" twice in the first proviso in subsection (2).

**Effective Date**

Section 2 of Ch. 149, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 27, 1969.

**11-2209. (5232) Bid for work and award of contract. (1) \* \* \***  
[Same as parent volume.]

(2) The time fixed for the opening of bids shall be not less than ten (10) days from the time of the final publication of said notice. All proposals or bids offered shall be accompanied by bid security as provided for in Title 6, chapter 5, R. C. M. 1947. Said proposals or bids shall be delivered to the clerk of the said city council. The bids shall be opened in public at a time and place to be designated by the city council at the previous council meeting. The city council may reject any and all proposals or bids should it deem this for the public good, and also the bid of any party who has been delinquent or unfaithful in any former contract with the municipality, and shall reject all proposals or bids other than the lowest regular proposal or bid of any responsible bidder, and may award the contract for said work or improvement to the lowest responsible bidder at the prices named in his bid.

(3) If the bids are rejected, or no bids are received, the city council may, at any time within two (2) years thereafter, and whenever and as often as the city council deems it advantageous, readvertise for proposals or bids for the performance of the work as herein provided, without further proceedings, and thereafter proceed in the manner in this section provided, and shall thereupon return to the proper parties the bid securities corresponding to the bids so rejected. But the bid securities accompanying such accepted proposals or bids shall be held by the city clerk of said city until the contract for doing said work, as hereinafter provided, has been entered into, either by said lowest bidder, or by the owners of over fifty per centum (50%) of the frontage, whereupon said bid security shall be returned to said bidder. But if said bidder fails, neglects, or refuses to enter into the contract to perform said work or improvements, as hereinafter provided, then the bid securities accompanying his bid, and the amount therein mentioned, shall be declared to be forfeited to said city, and shall be collected by it and paid into the general fund. The provisions hereof shall be applicable to all special improvement districts created within one (1) year preceding the passage and approval of this act.

**History:** En. Sec. 8, Ch. 89, L. 1913; amd. Sec. 5, Ch. 142, L. 1915; re-en. Sec. 5232, R. C. M. 1921; amd. Sec. 1, Ch. 173, L. 1931; amd. Sec. 1, Ch. 138, L. 1974; amd. Sec. 1, Ch. 220, L. 1975.

**Amendments**

The 1974 amendment deleted "and said city council shall, in open session, publicly open, examine, and declare the same" be-

fore "provided" in the third sentence of subsection (2); and inserted the fourth sentence in subsection (2).

The 1975 amendment substituted "bid security as provided for in Title 6, chapter 5, R. C. M. 1947" for "a check payable to the city, certified by a responsible bank for an amount which shall not be less than ten per centum (10%) of the aggregate of the proposal" in the second sentence of



subsection (2); deleted "provided, however, that no proposal or bids shall be considered unless accompanied by said check" from the end of the third sentence of sub-

section (2); and substituted "bid securities" for "check" and "certified check" in subsection (3).

**11-2213. (5236) Bond of contractor.** All contractors, contracting owners included, shall, at the time of executing any contract for street work, execute a bond to the satisfaction and approval of the city council, in the form and manner provided for in Title 6, chapter 4, R. C. M. 1947.

**History:** En. Sec. 12, Ch. 89, L. 1913; re-en. Sec. 5236, R. C. M. 1921; amd. Sec. 2, Ch. 220, L. 1975.

form and manner provided for in Title 6, chapter 4, R. C. M. 1947" for specific surety requirements. For prior version, see parent volume.

#### **Amendments**

The 1975 amendment substituted "in the

**11-2214. (5238) Methods of payments of improvements.** (1) To defray the cost of the making of any of the improvements provided for in this act, the city council or commission shall adopt one of the following methods of assessment; unless otherwise provided in subsection 1 (c) :

(a) The city council or commission shall assess the entire cost of such improvements against the entire district, each lot or parcel of land within such district to be assessed for that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys and public places; provided, however, that the city council or commission, in its discretion, shall have the power to pay the whole or any part of the cost of any street, avenue or alley intersections, out of any funds in its hands, available for that purpose, or to include the whole or any part of such costs within the amount of the assessment to be paid by the property in the district. In order to equitably apportion the cost of any of the improvements herein provided for between that land within the district which lies within twenty-five (25) feet of the line of the street on which the improvement is to be made and all other land within the district, the council or commission may, in the resolution creating any improvement district, provide that the amount of the assessment against the property in such district, to defray the cost of such improvements, shall be so assessed that each square foot of land within the district lying within twenty-five (25) feet of the line of the street on which the improvements therein provided for are made shall bear double the amount of cost of such improvements per square foot of such land that each square foot of any other land within the district shall bear.

(b) \* \* \* [Same as parent volume.]

(c) Where curbs, gutters, alley approaches, streets, crossings and utility service connections are an integral part of the creation of storm sewer districts, sanitary sewer districts or street pavement districts, the city council or commission may assess a portion of the improvements upon the area basis, as set forth under subsection (1) (a); other portions of the improvements upon a lineal feet basis, as set forth under subsection (1) (b); and utility service connections upon a lump sum based on the bid price in the improvement district contract and assessed only against

the lots, tracts or parcel of land served by the utility connection or connections, all within the same special improvement district, so long as such assessment is equitable.

(d) When the purpose of the assessment is for the establishment and/or improvement of offstreet parking as provided in this act, the city council or commission shall assess against the real property specifically benefited by the offstreet parking facilities, the cost of the developments involved, in proportion to the benefits received by each tract of land within said district. In determining the benefit to be received by each parcel of land, the city council or commission shall consider:

(i) the relative distance of the parking facility from each parcel of land within the area of the special improvement district;

(ii) the relative needs of parking spaces for each parcel of land located within the boundaries of said district, either as established by the city zoning ordinance, if any, or otherwise, with relation to the use of said parcel;

(iii) the assessed value of each parcel within said district;

(iv) the square footage of each parcel within said district as it relates to the whole;

(v) the square footage of floor space in any improvements on the parcel and the various uses of such floor space;

(vi) the availability of existing on-site parking space on any parcel of land within the district. Provided, however, that before any improvement district can be created or financed under the provisions of this section, the city council or commission must, prior to the creation of said district, pass a city ordinance setting forth therein the formula to be used in determining the assessment of each lot or parcel within said district, which said formula must include but shall not be limited to the items to be considered as set forth hereinabove. And provided further that prior to the adoption of any such ordinance by the city council or commission, the city council or commission shall make a determination of the formula for the method of assessment as set forth above, considering all of the factors above set forth, and shall hold a public hearing after due notice and at such hearing all persons concerned may present their objections to the formula or any part of it and point out errors and inequities and submit reasons for amendments and corrections. The council may continue the hearing from time to time. After the council has heard all objections and suggestions, it shall correct any errors which it finds in the formula for assessment as originally made and shall finally establish and settle the formula for assessment in the same manner as any other city ordinance.

(2) to (6) \* \* \* [Same as parent volume.]

History: En. Sec. 14, Ch. 89, L. 1913; re-en. Sec. 5238, R. C. M. 1921; amd. Sec. 1, Ch. 163, L. 1925; amd. Sec. 1, Ch. 39, L. 1955; amd. Sec. 1, Ch. 330, L. 1971; amd. Sec. 1, Ch. 85, L. 1973.

#### Amendments

The 1971 amendment added "unless otherwise provided in subsection 1(e)" to the end of the preliminary paragraph of subsection (1); inserted subdivision

(1)(e); and made a minor change in punctuation.

The 1973 amendment added subdivision (d), including paragraphs (i) to (vi), to subsection (1); and made a minor change in style.

#### Effective Date

Section 2 of Ch. 85, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 3, 1973.

**11-2214.2. Assessments and bonds for pedestrian malls or off-street parking.** (a) to (c) \* \* \* [Same as parent volume.]

(d) The bonds shall be issued as of the date of the warrant, and shall bear interest from such date at the rate specified in the resolution of intention. They shall have semiannual interest coupons attached, the first of which shall be payable on January 1 or July 1, as the case may be, occurring ninety (90) days after the date of the bond, and shall be for the interest accrued at that time.

(e) \* \* \* [Same as parent volume.]

History: En. 11-2214.2 by Sec. 3, Ch. 136, L. 1967; amd. Sec. 14, Ch. 234, L. 1971.

**Amendments**

The 1971 amendment deleted "not exceeding eight per cent (8%) per annum" from the end of the first sentence of subsection (d).

**11-2216. (5239) Sewer systems.** (1) and (2). \* \* \* [Same as parent volume.]

(3) And/or to provide such sewer fund, and/or to provide for the retirement of such bonds, and/or the payment of the interest on such bonds, and/or for any purpose herein mentioned, the city council shall, upon being petitioned by five (5) per cent of the qualified electors, at the annual municipal election or at any special election called for that purpose, submit to a vote to the qualified electors, the question whether or not the city council may establish and collect rentals for the use of such sewer system and may fix scale of such rentals and prescribe the manner and time at which such rentals shall be paid, and if a majority of votes is cast in favor of such proposition then the city or town council may establish and collect rentals for the use of any such sewer system and may fix the scale of such rentals and prescribe the manner and time at which such rentals should be paid and to change such scale of rentals from time to time as may be deemed advisable; providing, that the total revenue to be collected from all of the above sources in a given year shall be provided for by the council in such a manner as to provide funds for the payment of all bond issues and interest thereon, as well as for all necessary expenses of the operation, maintenance and repair of any such sewer system. For the purpose of making such rental charges equitable, property benefited thereby may be classified, taking into consideration the volume and character of sewage or waste and the nature of the use made of such sewage facilities. Said rentals shall be collected or taxed against the property in like manner as water rentals are collected and taxed, or by such procedure as may be prescribed by the city or town council, the revenues in this paragraph provided shall be in addition to and not exclusive of other revenues which may be now legally collected for sewer payment.

(4). \* \* \* [Same as parent volume.]

(5) Any twenty-five (25) or more electors of such a municipality may file complaint with the public service commission to the effect that the rental charges so fixed are unreasonable or unjustly discriminatory, and the public service commission shall, upon public hearing thereon, file its findings and determination, stating therein in what respect, if any, said rental charges are unreasonable or unjustly discriminatory, and the mu-



municipality at interest shall forthwith readjust its rental charges so as to remove any unreasonable or unjustly discriminatory features so found by the public service commission.

(6). \* \* \* [Same as parent volume.]

History: En. Sec. 15, Ch. 89, L. 1913; re-en. Sec. 5239, R. C. M. 1921; amd. Sec. 1, Ch. 149, L. 1933; amd. Sec. 3, Ch. 100, L. 1973.

#### Amendments

The 1973 amendment deleted "who must be taxpaying freeholders, as shown by

the last assessment for taxable purposes" following "five (5) per cent of the qualified electors" in the first part of subsection (3); deleted "who must be taxpaying freeholders" following "qualified electors" later in subsection (3); and substituted "electors" for "freeholders" near the beginning of subsection (5).

**11-2217. Cities and towns may establish sewage treatment and disposal plant systems and water supply and distribution systems.** Any city or town may when authorized so to do by a majority vote of the qualified electors voting on the question establish, build, construct, reconstruct and/or extend a storm and/or sanitary sewerage system and/or a plant or plants for treatment or disposal of sewage therefrom, or a water supply and/or distribution system, or any combinations of such systems, and may operate and maintain such facilities for public use, and in addition to all other powers granted to it, such municipality shall have authority, by ordinance duly adopted by the governing body to charge just and equitable rates, charges or rentals for the services and benefits directly or indirectly furnished thereby. Such rates, charges or rentals shall be as nearly as possible equitable in proportion to the services and benefits rendered, and sewer charges may take into consideration the quantity of sewage produced and its concentration and water pollution qualities in general and the cost of disposal of sewage and storm waters. The sewer charges may be fixed on the basis of water consumption or any other equitable basis the governing body may deem appropriate and, if the governing body determines that the sewage treatment and/or storm water disposal prevents pollution of sources of water supply, may be established as a surcharge on the water bills of water consumers or on any other equitable basis of measuring the use and benefits of such facilities and services. In the event of nonpayment of charges for either water or sewer service and benefits to any premises, the governing body may direct the supply of water to such premises to be discontinued until such charges are paid.

In this act "qualified electors" shall mean registered electors of the municipality. The question of building, constructing, reconstructing or extending the system, plant or plants and the question of issuing and selling revenue bonds for such purpose may be submitted as a single proposition or as separate propositions. Any election under this act may be called by a resolution of the governing body which it may adopt without being previously petitioned to do so.

History: En. Sec. 1, Ch. 149, L. 1943; amd. Sec. 1, Ch. 100, L. 1947; amd. Sec. 1, Ch. 98, L. 1955; amd. Sec. 7, Ch. 158, L. 1971.

#### Amendments

The 1971 amendment deleted "whose

names appear upon the last preceding assessment roll for state and county taxes as taxpayers upon property within the municipality" from the end of the first sentence of the second paragraph.

**11-2218. May issue revenue bonds—sinking fund—refunding revenue bonds.** (1) Any such municipality may issue and sell negotiable revenue bonds for the construction of any such water or sewer system or combined water and sewer system when authorized so to do by a majority vote of the qualified electors voting on the question at an election called by the city council or other governing body of the municipality for that purpose, and noticed and conducted in accordance with the provisions of sections 11-2308 to 11-2310, inclusive; and all bonds shall mature within forty (40) years from date of bonds, and may be registered as to ownership of principal only with the treasurer of said municipality, if so directed by the governing body. No bonds shall be sold for less than par, and each of said bonds shall state plainly on its face that it is payable only from a sinking fund, naming said fund and the ordinance and resolution creating it, and that it does not create an indebtedness within the meaning of any charter, statutory or constitutional limitation upon the incurring of indebtedness.

(2) to (8) \* \* \* [Same as parent volume.]

(9) In any case where refunding bonds are issued and sold six (6) months or more before the earliest date on which all bonds refunded thereby mature or are prepayable in accordance with their terms, the proceeds of the refunding bonds, including any premium and accrued interest, shall be deposited in escrow with a suitable bank or trust company, having its principal place of business within or without the state, which is a member of the federal reserve system and has a combined capital and surplus not less than one million dollars (\$1,000,000), and shall be invested in such amount and in securities maturing on such dates and bearing interest at such rates as shall be required to provide funds sufficient to pay when due the interest to accrue on each bond refunded to its maturity or if it is prepayable, to the earliest prior date upon which such bond may be called for redemption, and to pay and redeem the principal amount of each such bond at maturity, or, if prepayable, at its earliest redemption date, and any premium required for redemption on such date; and the resolution or ordinance authorizing the refunding bonds shall irrevocably appropriate for these purposes the escrow fund and all income therefrom, and shall provide for the call of all prepayable bonds in accordance with their terms. The securities to be purchased with the escrow fund shall be limited to general obligations of the United States, securities whose principal and interest payments are guaranteed by the United States, and securities issued by the following United States government agencies: banks for co-operatives, federal home loan banks, federal intermediate credit banks, federal land banks, and the federal national mortgage association. Such securities shall be purchased simultaneously with the delivery of the refunding bonds.

(10) \* \* \* [Same as parent volume.]

**History:** En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963; amd. Sec. 13, Ch. 234, L. 1971.

#### **Amendments**

The 1971 amendment deleted "which bonds shall bear interest at a rate \* \* \* six per centum (6%) per annum" after "sections 11-2308 to 11-2310, inclusive"



near the middle of subsection (1); and made a minor change in punctuation.

#### **Installment Contracts**

Installment payment of construction costs of both separate and joint use facilities of city shop complex to be used in part by water and sewer department could be considered "normal, reasonable and current expenses of operation and

maintenance" of the water and sewer systems and thus department funds could be used to pay proportionate share of construction costs although they were derived from water and sewer charges which otherwise would be applied toward retirement of outstanding bonds. *Greener v. City of Great Falls*, 157 M 376, 485 P 2d 932.

### **11-2220. Income to be kept separately.**

#### **Power to Allocate Costs**

City has general budgetary authority in financing construction of city shop complex and has implied power to allocate

proportionate share of costs among various city departments using the facility. *Greener v. City of Great Falls*, 157 M 376, 485 P 2d 932.

**11-2226. (5244) Construction of sidewalks, curbs and gutters without formation of special improvement district.** The city council may order sidewalks, curbs and gutters, or any combination thereof, constructed in front of any lot or parcel of land without the formation of a special improvement district, and whenever the council shall order any such sidewalk, curb and gutter, or any combination thereof, constructed, such order shall be entered upon the minutes of the council and shall name the street along which said sidewalk, curb and gutter, or any combination thereof, is to be constructed. After the making of such order, written notice thereof shall be given the owner or agent of such property, in such manner as the council may direct. If the owner or agent of such lot or parcel of land shall fail or neglect for a period of thirty (30) days after the date of service of such notice to cause such sidewalk, curb and gutter, or any combination thereof, to be constructed, the city may construct or cause such sidewalk, curb and gutter, or any combination thereof, to be constructed, and shall assess the cost thereof, including engineering costs and the costs enumerated in section 11-2228 of this code, against the property in front of which the same is constructed.

When any such sidewalk, curb and gutter, or any combination thereof, is constructed by or under direction of the city council, payment for the construction thereof shall be made by special warrants in such form as may be prescribed by ordinance drawn against a fund to be known as special sidewalk, curb and gutter fund, and the council may provide for the payment of said interest annually.

The payment of assessments to defray the cost of construction of said sidewalks, curbs and gutters, or any combination thereof, may be spread over a term of not to exceed eight (8) years, payment to be made in equal annual installments.

The city council shall annually, and before the first Monday of October of each year, pass and adopt a resolution levying an assessment and tax against each lot or parcel of land in front of which sidewalks, curbs and gutters, or any combination thereof, have been constructed under orders of the city council. Said resolution levying such assessment shall be in every manner prepared and certified the same as resolutions levying assessments for the making of improvements in special improvement districts.



History: En. Sec. 20, Ch. 89, L. 1913; re-en. Sec. 5244, R. C. M. 1921; amd. Sec. 1, Ch. 12, L. 1929; amd. Sec. 1, Ch. 19, L. 1965; amd. Sec. 15, Ch. 234, L. 1971.

#### Amendments

The 1971 amendment deleted "which warrants shall bear interest at the rate of six per centum (6%) per annum" before "and the council may provide for the payment of said interest annually".

near the end of the third paragraph; and made minor changes in style.

#### State Highway Right of Way

City had no authority to construct sidewalk within the right-of-way boundary of a state highway without consulting the state highway department even though highway was within the city limits; nor could the city charge the costs of such a construction to the abutting property owner. *Palfy v. Director of Finance of City of Bozeman*, — M —, 540 P 2d 955.

**11-2226.1. Construction or replacement of alley approaches without formation of special improvement district.** The city council may order alley approaches constructed or replaced adjacent to any lot or parcel of land without the formation of a special improvement district, and whenever the council shall order any such alley approaches constructed or replaced, such order shall be entered upon the minutes of the council and shall name the street along which said alley approach is to be constructed or replaced. What constitutes an alley approach shall be defined by the city council of each municipality which orders in alley approaches as provided in this section. After the making of such order, written notice thereof shall be given the owners or agents of all adjacent owners having access to their properties by said alley approach, in such a manner as the council may direct. If the owners or agents of all adjacent owners of such lots or parcels of land shall fail or neglect for a period of thirty (30) days after the date of service of such notice to cause such alley approaches to be constructed or replaced, the city may construct or cause such alley approach to be constructed, and shall assess the cost thereof, including engineering costs and the costs enumerated in section 11-2228 of this code, against the lots or parcels of land having access to said property via the said constructed alley approaches.

When any such alley approach is constructed by or under direction of the city council, payment for the construction thereof shall be made by special warrants in such form as may be prescribed by ordinance drawn against a fund to be known as special alley approach fund, which warrants shall bear interest at the rate of up to six per cent (6%) a year, and the council may provide for the payment of said interest annually.

The payment of assessments to defray the cost of construction of said alley approach may be spread over a term of not to exceed eight (8) years, payment to be made in equal annual installments.

The city council shall annually, and before the first Monday of October of each year, pass and adopt a resolution levying an assessment and tax against each lot or parcel of land having access to said property via the said alley approach which has been constructed under orders of the city council. Said resolution levying such assessment shall be in every manner prepared and certified the same as resolutions levying assessments for the making of improvements in special improvement districts.

History: En. 11-2226.1 by Sec. 1, Ch. 206, L. 1971.

#### Title of Act

An act providing for construction or replacement of alley approaches without formation of special improvement districts.

**11-2227. (5245) Interest on assessments.** Upon all special assessments and taxes, levied and assessed in accordance with any of the provisions of this act, simple interest shall be charged, and the treasurer, in collecting such special assessment taxes, if the same are payable in one (1) installment, shall collect such interest as may be shown to be due thereon by the resolution levying such assessment; and if such assessment be payable in installments the treasurer shall, at the time of collecting the first installment, collect such interest as may be shown to be due on such assessment by the resolution levying such assessment, and thereafter he shall collect with each subsequent installment interest on the whole amount remaining unpaid.

**History:** En. Sec. 21, Ch. 89, L. 1913; re-en. Sec. 5245, R. C. M. 1921; amd. Sec. 1, Ch. 51, L. 1937; amd. Sec. 16, Ch. 234, L. 1971.

#### Amendments

The 1971 amendment deleted "at a rate not exceeding six per cent (6%) per annum" after "simple interest shall be charged" near the beginning of the section; and made a minor change in style.

**11-2231. (5249) Form of bonds and warrants.** All costs and expenses incurred in the construction of any improvements specified in this act, in any improvement district, shall be paid for by special improvement district bonds or warrants. Such bonds or warrants shall be drawn in substantially the following form:

District No. \_\_\_\_\_  
United States of America,  
State of Montana

Warrant or \_\_\_\_\_ Dollars  
(Bond No. —) \$ \_\_\_\_\_

Interest at the rate of \_\_\_\_\_ per cent per annum, payable annually.  
Special improvement district coupon warrant or bond

\_\_\_\_\_, Montana

Issued by the city of \_\_\_\_\_, Montana.

The treasurer of the city of \_\_\_\_\_, Montana, will pay to bearer, the sum of \_\_\_\_\_ dollars as authorized by resolution No. \_\_\_\_\_ as passed on the \_\_\_\_\_ day of \_\_\_\_\_, 19—, creating special improvement district No. \_\_\_\_\_ for the construction of the improvements and the work performed as authorized by said resolution to be done in said district, and all laws, resolutions, and ordinances relating thereto, in payment of the contract in accordance therewith. The principal and interest of this warrant (or bond) are payable at the office of the city treasurer of \_\_\_\_\_, Montana.

This warrant (or bond) bears interest at the rate of \_\_\_\_\_ per cent per annum from the day of registration of this warrant (or bond), as expressed herein, until the date called for redemption by the city treasurer. The interest on this warrant (or bond) is payable annually on the first day of \_\_\_\_\_ in each year, unless paid previous thereto, and as expressed by the interest coupons hereto attached, which bear the engraved facsimile signature of the mayor and city clerk.

This warrant (or bond) is payable from the collection of a special tax or assessment which is a lien against the real estate within said improvement district, as described in said resolution hereinbefore referred to.

This warrant (or bond) is redeemable at the option of the city at any time there are funds to the credit of said special improvement district fund for the redemption thereof, and in the manner provided for the redemption of the same.

It is hereby certified and recited, that all things required to be done, precedent to the issuance of this warrant (or bond), have been properly done, happened and been performed, in the manner prescribed by the laws of the state of Montana and the resolutions and ordinances of the city of \_\_\_\_\_, Montana relating to the issuance thereof.

(seal)

Dated at \_\_\_\_\_, Montana, this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.  
City of \_\_\_\_\_, Montana.

By: \_\_\_\_\_, Mayor  
\_\_\_\_\_, City Clerk

Registered at the office of the city treasurer of \_\_\_\_\_, Montana,  
this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
City Treasurer

And the same shall be drawn against the special improvement district fund created for the district, and shall bear interest from the date of registration until called for redemption or paid in full, interest to be payable annually on the first day of January of each year, unless the council prescribes another date. Such warrants (or bonds) shall bear the signatures of the mayor and clerk, and shall bear the corporate seal of the city. They shall be registered in the office of the clerk and treasurer, and if interest coupons be attached thereto, they shall also be so registered and shall bear the signatures of the mayor and clerk. Said bonds shall be in denominations of one hundred (\$100) dollars or fractions or multiples thereof, and may be issued in installments, and may extend over a period not to exceed twenty (20) years. Such warrants (or bonds) shall be redeemed by the treasurer when there are funds in the special improvement district fund against which said warrants (or bonds), on presentation of the coupons belonging thereto, and any funds remaining shall be applied to the payment of the principal and the redemption of the warrants (or bonds) in the order of their registration; and provided, further that whenever there are any funds in any special improvement district fund, after paying the interest on such warrants (or bonds) drawn against said fund, the treasurer shall call in for payment outstanding warrants (or bonds), which, together with the interest thereon to the date of redemption, will equal the amount of said fund on that date, which date shall be fixed by the treasurer, who shall give notice by publication once in a newspaper published in the city, or at the option of the treasurer, by written notice to the holder or holders of such warrants (or bonds) if their address be known, of the number of warrants (or bonds) and the date on which payment will be made, which date shall not be less than



ten (10) days after the date of publication or of service of notice, and on which date so fixed, interest shall cease.

History: En. Sec. 25, Ch. 89, L. 1913; amd. Sec. 8, Ch. 142, L. 1915; re-en. Sec. 5249, R. C. M. 1921; amd. Sec. 1, Ch. 23, L. 1937; amd. Sec. 1, Ch. 177, L. 1945; amd. Sec. 5, Ch. 260, L. 1959; amd. Sec. 17, Ch. 234, L. 1971.

#### Amendments

The 1971 amendment deleted "at a rate not exceeding six (6%) per cent per annum" after "and shall bear interest" near the beginning of the first sentence of the paragraph following the form for bonds and warrants.

**11-2249. (5263) Bonds and warrants—interest—redemption.** All cost and expenses incurred in the construction of the improvement specified in this act shall be paid for by special improvement lighting district bonds or warrants, in such form as may be prescribed by ordinance drawn against a fund to be known as "Special Improvement Lighting District No. ——— Fund." Said warrants or bonds shall be in the denomination of one hundred dollars (\$100) or fractions or multiples thereof; and may be issued in installments. Such warrants or bonds shall be redeemed by the treasurer when there is money in the fund against which said warrants or bonds are issued available therefor, and may extend over a period not to exceed eight (8) years, and shall bear interest from the date of registration thereof, until called for redemption or paid in full, interest to be payable annually on the first day of January of each year as expressed by the interest coupon attached thereto, which may bear the engraved facsimile signature of the mayor and city clerk. The requirements of this section shall apply to all special improvement lighting districts, including those now in the process of formation or to be formed hereafter.

History: En. Sec. 4, Ch. 143, L. 1915; re-en. Sec. 5263, R. C. M. 1921; amd. Sec. 1, Ch. 55, L. 1947; amd. Sec. 18, Ch. 234, L. 1971.

#### Amendments

The 1971 amendment deleted "at a rate not exceeding six per cent (6%) per annum" after "shall bear interest" in the third sentence; and made minor changes in style.

**11-2269. (5277.1) Special improvement district revolving fund.** The city or town council or commission of any city or town which has heretofore created, or may hereafter create, any special improvement district or districts for any purpose, may in its discretion, as to such district or districts heretofore created, and shall, as to such district or districts hereafter created, in order to secure prompt payment of any special improvement district bonds or sidewalk, curb and alley approach warrants issued in payment of improvements made therein, and the interest thereon as it becomes due, create, establish, and maintain by ordinance a fund to be known and designated as "Special Improvement District Revolving Fund."

History: En. Sec. 1, Ch. 24, L. 1929; amd. Sec. 1, Ch. 255, L. 1971.

#### Amendments

The 1971 amendment inserted "sidewalk, curb and alley approach" before "warrants" in the latter part of the section.

**11-2270. (5277.2) Transfers from general fund and tax levy for revolving fund.** For the purpose of providing funds for such revolving fund the city or town council

(1) \* \* \* [Same as parent volume.]

(2) shall, in addition to such transfer or transfers from the general fund, or in lieu thereof, levy and collect for such revolving fund such a tax, hereby declared to be for a public purpose, on all the taxable property in such city or town as shall be necessary to meet the financial requirements of such fund, such levy, together with such transfer, not to exceed in any one year five per centum (5%) of the principal amount of the then outstanding special improvement district bonds or sidewalk, curb and alley approach warrants.

History: En. Sec. 2, Ch. 24, L. 1929; amd. Sec. 2, Ch. 255, L. 1971.

walk, curb and alley approach" before "warrants" at the end of subdivision (2); and made a minor change in phraseology.

#### Amendments

The 1971 amendment inserted "or side-

**11-2271. (5277.3) Loans from revolving fund for paying improvement district bonds and warrants.** (1) Whenever any special improvement district bond or sidewalk, curb and alley approach warrants, or any interest thereon, shall be, at the time of the passage of this act, or shall thereafter become due and payable, and there shall then be either no money or not sufficient money in the appropriate district fund with which to pay the same, an amount sufficient to make up the deficiency may, by order of the council, be loaned by the revolving fund to such district fund, and thereupon such bond or warrant or such interest thereon, or in the case of such bonds or warrants due at the time of the passage of this act, such part of the amount due on such bond or warrant, whether it be for principal or for interest or for both as the council may in its discretion elect or determine shall be paid from the money so loaned or from the money so loaned when added to such insufficient amount, as the case may require.

(2) In connection with any public offering of special improvement district bonds or sidewalk, curb and alley approach warrants, the city or town council may undertake and agree to issue orders annually authorizing loans or advances from the revolving fund to the district fund involved in amounts sufficient to make good any deficiency in the bond and interest accounts thereof to the extent that funds are available, and may further undertake and agree to provide funds for such revolving fund pursuant to the provisions of section 11-2270 by annually making such tax levy (or, in lieu thereof, such loan from the general fund) as the city or town council may so agree to and undertake, subject to the maximum limitations imposed by said section 11-2270, which said undertakings and agreements shall be binding upon said city or town so long as any of said special improvement district bonds or sidewalk, curb and alley approach warrants so offered, or any interest thereon, remain unpaid.

History: En. Sec. 3, Ch. 24, L. 1929; amd. Sec. 1, Ch. 179, L. 1945; amd. Sec. 17, Ch. 158, L. 1971; amd. Sec. 3, Ch. 255, L. 1971.

incorporated the changes made by the other. Since the two amendments do not appear to conflict, the compiler has made a composite section embodying the amendments made by both 1971 acts.

#### Compiler's Notes

This section was amended twice in 1971, once by Ch. 158 and once by Ch. 255. Neither amendatory act referred to nor

#### Amendments

Chapter 158, Laws of 1971, deleted from the end of subsection (1) a proviso and



a sentence requiring that the revolving fund be approved by the taxpayers. For prior text, see parent volume.

Chapter 255, Laws of 1971, inserted "sidewalk, curb and alley approach" be-

fore "warrants" near the beginning of subsection (1) and near the beginning and near the end of subsection (2); and made a minor change in phraseology.

**11-2272. (5277.4) Lien for loans from revolving fund—surplus district funds transferred to revolving fund, investment of funds.** Whenever any loan is made to any special improvement district fund or sidewalk, curb and alley approach warrants from the revolving fund, the revolving fund shall have a lien therefor on all unpaid assessments and installments of assessments on such district, whether delinquent or not, and on all moneys thereafter coming into such district fund, to the amount of such loan, together with interest thereon from the time it was made at the rate, or percentage, borne by the bond or warrant for payment of which, or, of interest thereon, such loan was made; and whenever there shall be moneys in such district fund which are not required for payment of any bond or warrant of such district, or of interest thereon, so much of such moneys as may be necessary to pay such loan shall, by order of the council, be transferred to the revolving fund; and after all the bonds and warrants issued on any special improvement district or sidewalk, curb and alley approach warrants have been fully paid, all moneys remaining in such district fund shall by order of the council be transferred to and become part of the revolving fund.

Surplus reserves not needed for immediate use, may from time to time be invested in securities of the United States or certificates of deposit, approved by the city council. The interest earned from such investments shall be placed to the credit of the revolving fund.

**History:** En. Sec. 4, Ch. 24, L. 1929; amd. Sec. 4, Ch. 255, L. 1971.

walk, curb and alley approach warrants" in two places in the first paragraph; and added the second paragraph.

**Amendments**

The 1971 amendment inserted "or side-

**11-2275. Creation and maintenance of fund.** A supplemental revolving fund may be created by ordinance subject to the approval of a majority of the qualified electors voting upon the question at a general or special election. As used in this act "qualified electors" shall mean registered electors of the municipality. The supplemental revolving fund shall be created and maintained solely from the net revenues of parking meters and the ordinance may pledge to said fund all or any part of the said net revenues of parking meters which may be then owned or leased or rented or thereafter acquired by the city or town. Said ordinance shall contain such provisions in respect to the purchase, control, operation, repair and maintenance of parking meters, including rates to be charged, and the application of the net revenues therefrom and the management and use of the supplemental revolving fund as the council shall deem necessary.

**History:** En. Sec. 2, Ch. 260, L. 1947; amd. Sec. 8, Ch. 158, L. 1971.

**Amendments**

The 1971 amendment substituted "registered electors of the municipality" at



the end of the second sentence for "registered electors whose names appear upon the last preceding assessment roll for

state and county taxes as taxpayers upon property within the municipality."

**11-2277. Determination of provisions of bonds—maturity—interest—form.** Whenever the council has been authorized to issue bonds hereunder, the council may by resolution determine to issue such bonds and provide for the guaranty thereof by the supplemental revolving fund. Such resolution shall fix the amount, maturity, and interest rate and provide for the sale of bonds in such manner as the council shall determine. The governing body of the municipality in determining the cost of said improvement may include estimated costs of the issuance of said bonds, all engineering, inspection, fiscal and legal expenses, cost of the parking meters, and interest which it is estimated will accrue during the construction period and for six (6) months thereafter on money borrowed or which it is estimated will be borrowed for the special improvements for which bonds are issued. The bonds may mature at one time, not exceeding the maximum maturity of the assessments to be levied for said improvement or may mature in installments at various times during the term of said assessments, but in no event shall such bonds mature beyond ten (10) years from date thereof. Said bonds, as the council shall determine, shall be subject to redemption prior to maturity if so determined by the council, and may be payable at any suitable bank or trust company either within or without the state of Montana. The resolution providing for the issuance of bonds may also contain such reasonable covenants for the protection of the holders thereof as the council may determine. The bonds issued hereunder shall be in substantially the form provided in section 11-2231 as modified by the provisions hereof.

**History:** En. Sec. 4, Ch. 260, L. 1947; amd. Sec. 19, Ch. 234, L. 1971.

interest payable annually or semi-annually, not exceeding four and one-half (4½%) per cent per annum" after "Said bonds" at the beginning of the fifth sentence.

**Amendments**

The 1971 amendment deleted "shall bear

**11-2289. Corner lots.** For the purposes of special assessments levied against property as provided in this chapter, when assessments for improvements on both sides of a corner lot are determined in proportion to the lineal footage, the frontage of a corner lot in a platted block is the average of the two abutting sides.

**History:** En. 11-2289 by Sec. 1, Ch. 404, L. 1977.

**Title of Act**

An act to provide for an equitable method for assessments levied against corner lot property in a special improvement district.

**11-2290. Allocation of costs of nonfrontage sides.** The governing body shall allocate to all lots in the special improvement district a proportionate share of the costs according to the lineal feet assigned to each lot.

**History:** En. 11-2290 by Sec. 2, Ch. 404, L. 1977.

## CHAPTER 23—MUNICIPAL BONDS AND INDEBTEDNESS

## Section

- 11-2301. Creation of indebtedness—submission to taxpayers.
- 11-2303. Limitation on amount of indebtedness.
- 11-2304. Terms of bonds—rates of interest.
- 11-2306. Petition for election—form—proof.
- 11-2307.1. Resolution to issue bonds—when election required.
- 11-2310. Registration of electors.
- 11-2315. Sale of bonds.
- 11-2319. Delivery of bonds—payment for same—use of proceeds.

**11-2301. (5278.1) Creation of indebtedness—submission to taxpayers.**

Whenever the council or commission of any city or town having a corporate existence in this state, or hereafter organized under any of the laws thereof, shall deem it necessary to issue bonds pledging the general credit of the municipality for any purpose whatever, under its powers as set forth in any statute or statutes of this state, or amendments thereto, the question of issuing such bonds shall first be submitted to the electors of such city or town who are qualified to vote on such question, in the manner hereinafter set forth; provided, however, that it shall not be necessary to submit to such electors the question of issuing refunding bonds to refund bonds theretofore issued and then outstanding: or the question of issuing revenue bonds not pledging the general credit of the municipality under any laws of this state; provided further that no refunding bonds shall be issued unless such refunding bonds shall bear interest at a rate of at least one-half of one per cent ( $\frac{1}{2}$  of 1%) less than the interest rate of the outstanding bonds to be refunded. In order to issue bonds to refund bonds theretofore issued and outstanding it shall only be necessary for the council, at a regular or duly called special meeting, to pass and adopt a resolution setting forth the facts with regard to the indebtedness to be refunded, showing the reason for issuing such refunding bonds, and fixing and determining the details thereof, giving notice of sale thereof in the same manner that notice is required to be given of sale of bonds authorized at an election and then following the procedure in this act for the sale and issuance of such bonds.

**History:** En. Sec. 1, Ch. 160, L. 1931; amd. Sec. 1, Ch. 100, L. 1933; amd. Sec. 1, Ch. 12, L. 1937; amd. Sec. 1, Ch. 108, L. 1937; amd. Sec. 1, Ch. 15, L. 1943; amd. Sec. 1, Ch. 62, L. 1945; amd. Sec. 1, Ch. 413, L. 1973.

**Amendments**

The 1973 amendment inserted "pledging the general credit of the municipality" near the beginning of the first sentence; and inserted "or the question of issuing revenue bonds not pledging the general credit of the municipality under any laws of this state" in the first proviso to the first sentence.

**11-2303. (5278.3) Limitation on amount of indebtedness.** No city or town may issue bonds for any purpose in an amount which with all outstanding and unpaid indebtedness will exceed 18% of the taxable value of the property therein subject to taxation, to be ascertained by the last assessment for state and county taxes. For the purpose of constructing a sewerage system, procuring a water supply, or constructing or acquiring a water system for a city or town which shall own and control the water supply and water system and devote the revenues therefrom to the payment of the debt, a city or town may incur an additional indebtedness by borrowing money or issuing bonds. The additional total indebtedness that may

be incurred by borrowing money or issuing bonds for the construction of a sewerage system, for the procurement of a water supply, or for both such purposes, including all indebtedness theretofore contracted which is unpaid or outstanding, may not in the aggregate exceed 10% over and above the 18% heretofore referred to of the total taxable value of the property therein subject to taxation as ascertained by the last assessment for state and county taxes. The issuing of bonds for the purpose of funding or refunding outstanding warrants or bonds is not the incurring of a new or additional indebtedness but is merely the changing of the evidence of outstanding indebtedness.

**History:** En. Sec. 3, Ch. 160, L. 1931; amd. Sec. 1, Ch. 116, L. 1951; amd. Sec. 2, Ch. 34, L. 1955; amd. Sec. 1, Ch. 33, L. 1973; amd. Sec. 30, Ch. 566, L. 1977.

#### Amendments

The 1973 amendment inserted "assessed" before "value of the taxable property therein" near the beginning of the section; deleted from the final sentence

a definition of "value of the taxable property"; and made a minor change in phraseology.

The 1977 amendment changed the limitation from 5% of assessed value to 18% of taxable value; inserted "total" before "indebtedness" near the beginning of the third sentence; and made minor changes in phraseology, punctuation and style.

**11-2304. (5278.4) Terms of bonds—rates of interest.** No bonds for any purpose shall be issued for a longer term than twenty (20) years, and when bonds are issued for the purpose of refunding bonds theretofore issued and outstanding, such bonds shall not be issued for a longer term than ten (10) years, provided that if the unexpired term of the bonds to be refunded shall be more than ten (10) years, then in such event, the refunding bonds may be issued for such unexpired term. All bonds issued for a longer term than five (5) years shall be redeemable at the option of the city or town on any interest payment date after one-half ( $\frac{1}{2}$ ) of the term for which they were issued has expired, and it shall be so recited in the bonds. The maximum rate of interest which any bonds may bear shall be seven per cent (7%) per annum and shall be payable semiannually.

**History:** En. Sec. 4, Ch. 160, L. 1931; amd. Sec. 1, Ch. 34, L. 1933; amd. Sec. 2, Ch. 62, L. 1945; amd. Sec. 4, Ch. 234, L. 1971; amd. Sec. 1, Ch. 284, L. 1973.

#### Amendments

The 1971 amendment increased the maximum rate of interest of bonds authorized to be issued under this chapter from 6% to 7% per annum.

The 1973 amendment substituted "shall" for "may" before "be redeemable" in the second sentence; substituted "after one-half ( $\frac{1}{2}$ ) of the term for which they were issued has expired" for "five (5) years from the date of issue" in the second sentence; and made minor changes in phraseology.

**11-2306. (5278.6) Petition for election—form—proof.** No bonds shall be issued by a city or town pledging the general credit of the municipality for any purpose, except to fund or refund warrants or bonds issued prior to and outstanding on July first, 1942, as authorized in section 11-2301, unless authorized at a duly called special or general election at which the question of issuing such bonds was submitted to the qualified electors of the city or town, and approved, as hereinafter provided. Such an election may be called by the city or town council or commission on its passage of the necessary resolution as hereinafter provided or after there has been presented to the council or commission a petition, asking that such



election be held and question submitted, signed by not less than twenty per centum (20%) of the qualified electors of the city or town. Every petition for the calling of an election to vote upon the question of issuing bonds shall plainly and clearly state the purpose or purposes for which it is proposed to issue such bonds, and shall contain an estimate of the amount necessary to be issued for such purpose or purposes. There may be a separate petition for each purpose, or two (2) or more purposes may be combined in one (1) petition, if each purpose with an estimate of the amount of bonds to be issued therefor is separately stated in such petition. Such petition may consist of one (1) sheet, or of several sheets identical in form and fastened together, after being circulated and signed, so as to form a single complete petition before being delivered to the city or town clerk, as hereinafter provided. The petition shall give the street and house number, if any, and the voting precinct of each person signing the same.

Only persons who are qualified to sign such petitions shall be qualified to circulate the same, and there shall be attached to the completed petition the affidavit of some person who circulated, or assisted in circulating, such petition, that he believes the signatures thereon are genuine and that the signers knew the contents thereof before signing the same. The completed petition shall be filed with the city or town clerk who shall, within fifteen (15) days thereafter, carefully examine the same and the county records showing the qualifications of the petitioners, and attach thereto a certificate, under his official signature, which shall set forth:

(1) The total number of persons who are registered electors.

(2) \* \* \* [Same as parent volume.]

(3) Whether such qualified signers constitute more or less than twenty per centum (20%) of the registered electors of the city or town.

History: En. Sec. 6, Ch. 160, L. 1931; amd. Sec. 2, Ch. 108, L. 1937; amd. Sec. 2, Ch. 15, L. 1943; amd. Sec. 9, Ch. 158, L. 1971; amd. Sec. 2, Ch. 413, L. 1973.

#### Amendments

The 1971 amendment deleted "who are taxpayers upon property within such city or town and whose names appear on the last completed assessment roll for state and county taxes, as taxpayers within such city or town" from the end of the first sentence of the first paragraph; deleted "and whose names appear upon the last completed assessment roll for state and county taxes, as taxpayers within such city or town" from the end of subdivision (1); and substituted "registered electors of the city or town" at the end

of subdivision (3) for "registered electors whose names appear upon the last completed assessment roll for state and county taxes, as taxpayers within such city or town."

The 1973 amendment inserted "pledging the general credit of the municipality" near the beginning of the first sentence of the first paragraph; and substituted "Such an election may be called by the city or town council or commission on its passage of the necessary resolution as hereinafter provided or after there has been presented to the council or commission a petition" at the beginning of the second sentence for "and no such election shall be called unless there has been presented to the city or town council a petition."

### 11-2307. (5278.7) Repealed.

#### Repeal

Section 11-2307 (Sec. 7, Ch. 160, L. 1931), relating to submission to the electors of a petition for issuance of municipi-

pal bonds, was repealed by Sec. 5, Ch. 413, Laws 1973. For new law, see sec. 11-2307.1.

**11-2307.1. Resolution to issue bonds—when election required.** When the council or commission of any city or town deems it necessary to issue

bonds pledging the general credit of the municipality pursuant to any statute of this state, the council shall pass and adopt a resolution which shall recite the purpose or purposes for which it is proposed to issue such bond, fix the amount of bonds to be issued for each purpose, determine the number of years through which such bonds are to be paid not exceeding the limits fixed in section 11-2303, and unless such bonds are revenue bonds not pledging the general credit of the municipality, making such provisions as are necessary for having the questions submitted to the qualified electors of the city or town at the next general city or town election or at a special election which the council or commission may call for such purpose. In cases where the bond issuance is proposed by petition the council or commission shall before submitting the measure to the electorate pass a resolution containing the information hereinabove required and in addition thereto, setting forth the essential facts in regard to the filing and presentation of the petition.

**History:** En. 11-2307.1 by Sec. 3, Ch. 413, L. 1973.

#### **Title of Act**

An act authorizing cities and towns to hold elections on the issuance of general obligation bond issue without there first

having been filed a petition calling such election; authorizing the issuance of revenue bonds without an election; amending sections 11-2301, 11-2306 and 11-2404, R. C. M. 1947; and repealing section 11-2307, R. C. M. 1947.

**11-2310. (5278.10) Registration of electors.** Upon the adoption of the resolution calling for the election the city or town clerk shall notify the county clerk of the date on which the election is to be held and the county clerk must cause to be published in the official newspaper of the city or town, if there be one, and if not in a newspaper circulated generally in the said city or town and published in the county where the said city or town is located, a notice signed by the county clerk stating that registration for such bond election will close at noon on the fifteenth (15th) day prior to the date for holding such election and at that time the registration books shall be closed for such election. Such notice must be published at least five (5) days prior to the date when such election books shall be closed.

After the closing of the registration books for such election the county clerk shall promptly prepare lists of the qualified electors of such city or town who are entitled to vote at such election and shall prepare precinct registers for such election as provided in section 23-3012 and deliver the same to the city or town clerk who shall deliver the same to the judges of election prior to the opening of the polls. It shall not be necessary to publish or post such lists of qualified electors.

**History:** En. Sec. 10, Ch. 160, L. 1931; amd. Sec. 1, Ch. 182, L. 1939; amd. Sec. 17, Ch. 64, L. 1959; amd. Sec. 10, Ch. 158, L. 1971.

#### **Amendments**

The 1971 amendment deleted from the beginning of the section a sentence reading "Only such registered electors of the city or town whose names appear upon the last preceding assessment roll for state and county taxes, as taxpayers upon

property within the city or town, shall be entitled to vote upon any proposition of issuing bonds by the city or town"; deleted "who are taxpayers upon property therein and whose names appear upon the last completed assessment roll for state, county and school district taxes and" before "who are entitled to vote" in the first sentence of the second paragraph; and substituted a reference to section 23-3012 for a reference to section 23-515.



**11-2313, 11-2314.****Compiler's Notes**

Section 100, Ch. 326, Laws 1974, substituted "board of investments" in these

sections for "state board of land commissioners."

**11-2315. (5278.15) Sale of bonds.** The city or town council shall meet at the time and place fixed in the notice to consider bids for the bonds. The bonds shall be sold at not less than par and accrued interest to date of delivery, and each bidder shall specify the form of bonds to be issued, whether amortization or serial, and the rate of interest at which he will purchase the bonds. A bid for amortization bonds shall have the preference over a bid for serial bonds, all other things being equal; and in determining the kind of bonds to be issued the council shall take into consideration not only the rate of interest demanded on each kind but also all other known elements affecting the interests of the city or town, and the council shall accept the bid they shall judge most advantageous to the city or town. No attorneys fees, brokerage or other fees or commissions of any kind shall be paid to any person or corporation for assisting in the proceedings, or in the preparation of the bonds, or in negotiating the sale thereof. The board is authorized to reject any and all bids and to sell the bonds at private sale if they deem it for the best interests of the city or town, provided, however, that such bonds shall not be sold at less than par and accrued interest to date of delivery.

**History:** En. Sec. 15, Ch. 160, L. 1931; amd. Sec. 8, Ch. 234, L. 1971.

to the third sentence; and deleted "shall not bear a greater rate of interest than six per centum (6%) per annum and" after "such bonds" in the proviso to the last sentence.

**Amendments**

The 1971 amendment deleted the proviso

**11-2319. (5278.19) Delivery of bonds—payment for same—use of proceeds.** If the board of investments is the purchaser of the bonds, the city or town treasurer shall forward the registered bonds to the department of administration who shall deliver them to the state treasurer and payment therefor shall be made in the manner provided by law. If the bonds are purchased by other investors the city or town treasurer shall deliver the bonds to the purchaser upon receiving full payment therefor. All moneys arising from the sale of the bonds shall be paid to the city or town treasurer and shall be immediately available for the purpose for which the bonds were issued and for no other purpose.

**History:** En. Sec. 19, Ch. 160, L. 1931; amd. Sec. 2, Ch. 326, L. 1974.

for "state board of land commissioners"; substituted "department of administration" in the first sentence for "secretary of the board"; and made minor changes in phraseology.

**Amendments**

The 1974 amendment substituted "board of land investments" in the first sentence

**11-2326. (5278.26) Redemption of bonds before maturity.****Compiler's Notes**

Section 100, Ch. 326, Laws 1974, substituted "board of investments" in this

section for "state board of land commissioners."



**11-2329. (5278.29) Exchange of bonds for amortization bonds.****Compiler's Notes**

out this section for "state board of land  
 Section 100, Ch. 326, Laws 1974, sub- commissioners."  
 stituted "board of investments" through-

**CHAPTER 24—MUNICIPAL REVENUE BOND ACT OF 1939****Section****11-2402. Definitions.****11-2404. Authorization of undertaking—form and contents of bonds.**

**11-2402. Definitions.** Whenever used in this act, unless a different meaning clearly appears from the context:

(a) The term "undertaking" shall mean any one or a combination of the following: water, and sewerage systems, together with all parts thereof and appurtenances thereto including, but not limited to, supply and distribution systems, reservoirs, dams, sewage treatment, disposal works, public airport construction and public airport building, convention facilities, public recreation facilities and public parking facilities; or other revenue-producing facilities and services authorized in these codes for cities and towns.

(b) and (c). \* \* \* [Same as parent volume.]

**History:** En. Sec. 2, Ch. 126, L. 1939;

amd. Sec. 1, Ch. 42, L. 1949; amd. Sec. 1,

Ch. 111, L. 1959; amd. Sec. 1, Ch. 254, L.

1969.

**Amendments**

The 1969 amendment inserted "convention facilities, \* \* \* parking facilities" in the definition of "undertaking."

**11-2404. Authorization of undertaking—form and contents of bonds.**

The acquisition, purchase, construction, reconstruction, improvement, betterment or extension of any undertaking may be authorized under this chapter, and bonds may be authorized to be issued under this chapter by resolution or resolutions of the governing body of the municipality without an election or, should the governing body in its sole discretion choose to submit the question to the electorate, when authorized by a majority of the qualified electors voting upon such question at a special election noticed and conducted as provided in sections 11-2308 to 11-2310, inclusive, and said special election shall be held not later than the next municipal election held after the council or governing body of the municipality has by resolution or resolutions approved the acquisition, purchase, construction, reconstruction, improvement, betterment or extension of any undertaking as in this chapter provided and ordered said special election.

Said bonds shall bear interest at such rate or rates not exceeding nine per cent (9%) per annum, payable semiannually, may be in one or more series, may bear such date or dates, may mature at such time or times not exceeding forty (40) years from their respective dates, may be payable in such place or places, may carry such registration privileges, may be subject to such terms of redemption, may be executed in such manner, may contain such terms, covenants and conditions, and may be in such form, either coupon or registered, as such resolution or subsequent

resolutions may provide. Said bonds shall be sold at not less than par. Said bonds may be sold at private sale to the United States of America or any agency, instrumentality or corporation thereof. Unless sold to the United States of America or agency, instrumentality or corporation thereof, said bonds shall be sold at public sale after notice of such sale published once at least five (5) days prior to such sale in a newspaper circulating in the municipality and in a financial newspaper published in the city of New York, New York, or the city of Chicago, Illinois, or the city of San Francisco, California, except that, in the event the bond issue is in an amount of less than one hundred fifty thousand dollars (\$150,000), the bond issue shall be advertised at least five (5) days prior to such sale in daily newspapers circulating in Montana cities of 10,000 population or over, in lieu of advertising in a financial newspaper in New York, Chicago, or San Francisco, and also in a newspaper as specified in section 16-1201 if that newspaper is different from the daily newspapers circulating in Montana cities of 10,000 population or over. Pending the preparation of the definitive bonds, interim receipts or certificates in such form and with such provisions as the governing body may determine may be issued to the purchaser or purchasers of bonds sold pursuant to this chapter. Said bonds and interim receipts or certificates shall be fully negotiable, as provided by the Uniform Commercial Code—Investment Securities.

**History:** En. Sec. 4, Ch. 126, L. 1939; amd. Sec. 2, Ch. 145, L. 1951; amd. Sec. 2, Ch. 38, L. 1957; amd. Sec. 1, Ch. 52, L. 1963; amd. Sec. 11-106, Ch. 264, L. 1963; amd. Sec. 11, Ch. 158, L. 1971; amd. Sec. 5, Ch. 234, L. 1971; amd. Sec. 4, Ch. 413, L. 1973.

#### Compiler's Notes

Section 16-1201, referred to in the second paragraph of this section, was repealed by Sec. 10, Ch. 280, Laws 1967. For similar provisions in current law, see sec. 16-1230.

#### Amendments

Chapter 158, Laws of 1971, substituted "a majority of the qualified electors" for "a majority of the taxpayers" in the first paragraph.

Chapter 234, Laws of 1971, included the change made by Ch. 158, and increased the maximum rate of interest on bonds authorized to be issued under this chapter from 6% to 9% per annum.

The 1973 amendment inserted "without an election or, should the governing body in its sole discretion choose to submit the question to the electorate" in the middle of the first paragraph; and deleted "provided, that the issuance of refunding revenue bonds may be authorized by resolution or resolutions of the governing body of the municipality without an election" from the end of the first paragraph.

#### Repealing Clause

Section 5 of Ch. 413, Laws 1973 read "Section 11-2307, R. C. M. 1947, is repealed."

### 11-2412. Consent of state agencies.

#### Compiler's Notes

Section 106, Ch. 349, Laws 1964, substituted "department of health and en-

vironmental sciences" in this section for "state board of health."

## CHAPTER 27—BUILDING REGULATIONS—ZONING COMMISSION

#### Section

11-2702. Districts for effecting building restrictions.

11-2702.1. Community residential facility—defined.

11-2702.2. Foster, boarding homes, community residential facilities considered residential.

- 11-2705. Changes.
- 11-2707. Board of adjustment.
- 11-2711. Interim zoning ordinances—when permitted—duration.

**11-2701. (5305.1) Building restrictions by cities and towns, etc.**

**Elemental Fairness**

Where plaintiff's building permit was denied after he had moved a house onto his lot in reliance upon mayor's representation that the building permit had

been approved, the conduct of the town council and the mayor was so fundamentally unfair as to require reversal. State ex rel. Barker v. Town of Stevensville, — M —, 523 P 2d 1388.

**11-2702. (5305.2) Districts for effecting building restrictions. (1)**

For any or all of said purposes the local city or town council or other legislative body may divide the municipality into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this act; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. All such regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts.

(2) The local city or town council, or other legislative body which has adopted a master plan pursuant to Title 11, chapter 38 may extend the application of its zoning or subdivision regulations or both beyond its limits in any direction, but not in a county which has adopted such regulations within the contemplated area; provided that a city of the first class as defined in section 11-201 of this code may not extend the application of its zoning or subdivision regulations or both more than three (3) miles beyond its limits, a city of the second class may not so extend more than two (2) miles beyond its limits, and a city or town of the third class may not so extend more than one (1) mile beyond its limits. Provided, further, that where two or more noncontiguous cities have boundaries so near to one another as to create an area of potential conflict in the event that all cities concerned should exercise the full powers conferred by this section, then the extension of zoning or subdivision regulations or both by these cities shall terminate at a boundary line agreed upon by the cities so concerned. Any city or town council or other legislative body, may thereafter enforce such regulations in the area to the same extent as if such property were situated within its corporate limits, until the county board adopts a master plan pursuant to Title 11, chapter 38 and accompanying zoning or subdivision resolutions or both which include the area. As a prerequisite to the exercise of this power, a city-county planning board whose jurisdictional area includes the area to be regulated must be formed or an existing city planning board must be increased to include two (2) representatives from the unincorporated area which is to be affected. These representatives shall be appointed by the board of county commissioners. Such representation, however, shall cease when the county board adopts a master plan pursuant to Title 11, chapter 38 and accompanying zoning or subdivision resolutions or both which include the area.

A city or town, which has as its plan of government the commission-manager plan, shall be excluded from the provision of section 11-2702



(2) which defines extraterritorial authority to review proposed subdivisions.

**History:** En. Sec. 2, Ch. 136, L. 1929; amd. Sec. 1, Ch. 273, L. 1971; amd. Sec. 1, Ch. 354, L. 1973.

#### Amendments

The 1971 amendment designated the former language as subsection (1) and added subsection(2).

The 1973 amendment inserted "a city-county planning board whose jurisdictional area includes the area to be regulated

must be formed or" in the fourth sentence of subsection (2); and inserted "existing" before "city planning board" in the same sentence.

#### Void Building Permit

Building permit which was issued in violation of city zoning ordinance is void ab initio and creates no legal rights. State ex rel. Russell Center v. City of Missoula, — M —, 533 P 2d 1087.

**11-2702.1. Community residential facility—defined.** "Community residential facility" means (1) a group, foster, or other home specifically provided as a place of residence for developmentally disabled or handicapped persons who do not require nursing care, or (2) a district youth guidance home established pursuant to section 10-1103 [10-1244], or (3) a halfway house operated in accordance with regulations of the department of health and environmental sciences for the rehabilitation of alcoholics or drug dependent persons, or (4) a licensed adult foster family care home.

**History:** En. Sec. 1, Ch. 350, L. 1973; amd. Sec. 1, Ch. 129, L. 1974; amd. Sec. 6, Ch. 364, L. 1975.

#### Compiler's Notes

The bracketed reference to section 10-1244 has been inserted by the compiler. Section 10-1103 was redesignated as section 10-1244 by Sec. 44, Ch. 329, Laws of 1974.

#### Title of Act

An act providing that foster or boarding homes or community residential facilities serving eight (8) or fewer speci-

fied handicapped persons be considered as a residential use of property; be permitted to use all residential zones; and to permit cities and counties to require a conditional use permit to maintain such homes in residential zones.

#### Amendments

The 1974 amendment added subdivision (2); and made a minor change in style.

The 1975 amendment added item (4).

#### Effective Date

Section 7, Ch. 364, Laws 1975 read "This act is effective October 1, 1975."

**11-2702.2. Foster, boarding homes, community residential facilities considered residential.** A foster or boarding home operated under the provision of sections 10-520 through 10-523 [10-1316 through 10-1319], or community residential facility serving eight (8) or fewer persons, is considered a residential use of property for purposes of zoning if the home provides care on a twenty-four (24) hour a day basis.

The homes are a permitted use in all residential zones, including, but not limited to, residential zones for single-family dwellings. Nothing in this paragraph shall be construed to prohibit a city or county from requiring a conditional use permit in order to maintain a home pursuant to the provisions of this paragraph; provided such home is licensed by the department of health and environmental sciences and the department of social and rehabilitation services. Any safety or sanitary regulation of the department or any other agency of the state or political subdivision thereof which is not applicable to residential occupancies in general may not be applied to a community residential facility serving eight (8) or fewer persons.

**History:** En. Sec. 2, Ch. 350, L. 1973; amd. Sec. 2, Ch. 129, L. 1974.

#### Compiler's Notes

The bracketed reference to sections 10-1316 through 10-1319 has been inserted by the compiler to show the redesignation of sections 10-520 through 10-523 by Sec. 14, Ch. 328, Laws of 1974.

#### Amendments

The 1974 amendment deleted "developmentally disabled or otherwise handicapped" in the first paragraph after "(8) or fewer"; added "and the department of

social and rehabilitation services" at the end of the second sentence of the second paragraph; added the third sentence of the second paragraph; and made a minor change in phraseology.

#### Constitutionality

This section is constitutional within purview of 1972 Montana Constitution and supersedes such city ordinances that restrict use of residential areas to one-family dwellings only. State ex rel. Thelen v. City of Missoula, — M —, 543 P 2d 173.

### 11-2703. (5305.3) Purposes of act.

#### Lack of Factual Information

Rezoning ordinance of city council and order of the district court upholding the ordinance, which were based on evidence so lacking in factual information that

they could be said to have been based on mistakes of fact, constituted an abuse of discretion. Lowe v. City of Missoula, — M —, 525 P 2d 551.

**11-2705. (5305.5) Changes.** Such regulations, restrictions, and boundaries may from time to time be amended, supplemented, changed, modified, or repealed. In case, however, of a protest against such change, signed by the owners of twenty per centum (20%) or more either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof extending one hundred and fifty (150) feet therefrom, or of those adjacent on either side thereof within the same block, or of those directly opposite thereof extending one hundred and fifty (150) feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three-fourths ( $\frac{3}{4}$ ) of all the members of the city or town council or legislative body of such municipality. The provisions of the previous section relative to public hearings and official notice shall apply equally to all changes or amendments.

**History:** En. Sec. 5, Ch. 136, L. 1929; amd. Sec. 1, Ch. 161, L. 1969.

#### Void Building Permit

#### Amendments

The 1969 amendment inserted "or of those adjacent \* \* \* same block" before "or of those directly opposite \* \* \*" in the second sentence.

Building permit which allowed owner to use land for a purpose for which it was not zoned had the effect of rezoning without compliance with this section, and was therefore void. State ex rel. Russell Center v. City of Missoula, — M —, 533 P 2d 1087.

**11-2707. (5305.7) Board of adjustment.** Such city or town council or other legislative body may provide for the appointment of a board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of this act may provide that the said board of adjustment may, in appropriate cases, and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purposes and intent and in accordance with the general or specific rules therein contained.

An ordinance adopted pursuant to this section providing for a board of adjustment may restrict the authority of the board and provide that the city or town council, or other legislative body, reserves to itself the power

to make certain exceptions to regulations, ordinances, or land-use plans adopted pursuant to this chapter.

(1) to (12) \* \* \* [Same as parent volume.]

**History:** En. Sec. 7, Ch. 136, L. 1929; amd. Sec. 1, Ch. 13, L. 1975.

bros v. Board of Adjustment of City of Missoula, 153 M 20, 452 P 2d 398.

#### Amendments

The 1975 amendment inserted the second preliminary paragraph.

#### Evidence at Hearing

Taking of additional evidence by district court on appeal from board of adjustment's denial of zoning variance was not abuse of discretion even though board did not present any additional evidence. Lam-

#### Refusal of Variance

Refusal of variance to expand trailer court was sufficiently supported by evidence that there were sanitation problems in the neighborhood and that the hardship conditions were self-imposed by the act of the owner in proceeding with expansion before receiving the variance. Wheeler v. Armstrong, — M —, 533 P 2d 964.

**11-2711. Interim zoning ordinances—when permitted—duration.** The city or town council, or other legislative body of such municipality, to protect the public safety, health, and welfare and without following the procedures otherwise required preliminary to the adoption of a zoning ordinance, may adopt as an urgency measure, an interim ordinance prohibiting any uses which may be in conflict with a contemplated zoning proposal which the legislative body is considering or studying or intends to study within a reasonable time. Such interim ordinance shall only be applicable within the city limits and up to one mile beyond the corporate boundaries of the city or town and shall take effect upon passage; provided, however, a hearing is first held upon notice reasonably designed to inform all affected parties and in no event shall notice be less than publication in a newspaper of general circulation at least seven (7) days before the hearing; provided further, however, such interim ordinance shall be of no further force and effect six (6) months from the date of adoption thereof; provided, however, that after notice pursuant to section 11-2704, and pursuant to public hearing, the legislative body may extend such interim ordinance for one (1) year. Any such extension shall require a two-thirds ( $\frac{2}{3}$ ) vote for passage and shall become effective upon passage. Not more than two (2) such extensions may be adopted.

**History:** En. 11-2711 by Sec. 1, Ch. 488, L. 1975.

#### Title of Act

An act to provide for and to regulate interim municipal zoning regulations.

## CHAPTER 28—VACATION AND ABANDONMENT OF STREETS, PARKS AND TOWNSITES

#### Section

11-2806. Costs of discontinuation.

### 11-2801. (5306) Discontinuation of streets—procedure.

#### Closed for School Purposes

Erection of fence by school board on city-owned land adjacent to street in such a manner as to block neither vehicular nor pedestrian traffic would not be a discontinuance, closing or vacation of all or part

of street and would not fall within natural import of language "closed for school purposes" as used in this section, so that approval by 75% of lot owners on street was not required. State ex rel. Smart v. City of Big Timber, — M —, 528 P 2d 688.



**11-2803. (5308) Vacation of plats in abandoned townsites.****Compiler's Notes**

Section 11-614 referred to in the text in the parent volume was repealed by Sec. 20, Ch. 500, Laws 1973.

**11-2806. Costs of discontinuation.** Whenever a governing body discontinues, abandons, or vacates a street, alley, or road under Title 11, chapter 28 or Title 32, chapter 28, the costs of such process may be assessed against the petitioning property owner. Such costs may include costs of publication, engineering, and site viewing.

**History:** En. 11-2806 by Sec. 1, Ch. 72, L. 1977.

**Title of Act**

An act to provide for the assessment of

costs to petitioning property owners for discontinuation of streets, roads, and alleys owned by, or dedicated to, a municipality or county.

**CHAPTER 29—ENTRY TOWNSITES ON PUBLIC DOMAIN FOR  
INCORPORATED CITIES AND TOWNS**

**11-2907. (5316) What plat must show.****Compiler's Notes**

Sections 11-602 and 11-609 referred to in the text in the parent volume were repealed by Sec. 20, Ch. 500, Laws 1973.

**CHAPTER 30—ENTRY TOWNSITES ON PUBLIC DOMAIN FOR  
UNINCORPORATED CITIES AND TOWNS**

**11-3007. (5337) What plat must show.****Compiler's Notes**

Sections 11-602 and 11-609 referred to in the text in the parent volume were repealed by Sec. 20, Ch. 500, Laws 1973.

**CHAPTER 31—COMMISSION FORM OF GOVERNMENT**

**Section**

11-3112. Nomination of candidates—primary election.

11-3116. Bribery—false answers concerning qualifications of elector—voting by disqualified person.

11-3129. Publication of report by council.

**11-3112. (5377) Nomination of candidates—primary election. (1)**

\* \* \* [Same as parent volume.]

(2) Any qualified elector of said city who is the owner of any real estate situated therein, desiring to become a candidate for mayor or councilman, shall, at least ten days prior to said primary election, file with the city clerk a statement of such candidacy in substantially the following form:

State of Montana,

County of \_\_\_\_\_ } ss.

I, \_\_\_\_\_, being first duly sworn, say that I reside at \_\_\_\_\_ street, city of \_\_\_\_\_, county of \_\_\_\_\_ state of Montana; that I am a qualified voter therein; that I am a candidate for nomination to the office of (mayor or councilman) to be voted upon at the primary election to be held on the \_\_\_\_\_ Monday of \_\_\_\_\_, 19\_\_\_\_, and I hereby request

that my name be printed upon the official primary ballot for nomination by such primary election for such office.

(Signed) .....

Subscribed and sworn to (or affirmed) before me by ..... on this ..... day of ....., 19....

(Signed) .....

and shall at the same time file therewith the petition of at least twenty-five qualified voters requesting such candidacy. Each petition shall be verified by one or more persons as to qualifications and residence, with street number, of each of the persons so signing the said petition, and the said petition shall be in substantially the following form:

(3) Petition accompanying nominating statement.

The undersigned, duly qualified electors of the city of ....., and residing at the places set opposite our respective names hereto, do hereby request that the name of (name of candidate) be placed in the ballot as a candidate for nomination for (name of office) at the primary election to be held in such city on the ..... Monday of ....., 19.... We further state that we know him/her to be a qualified elector of said city and a person of good moral character, and qualified, in our judgment, for the duties of such office.

Names of qualifying electors.	Number.	Street.
.....	.....	.....
.....	.....	.....

(4) to (8) \* \* \* [Same as parent volume.]

(9) Every person who has been declared elected mayor or councilman, shall, within ten days thereafter, take and file with the city clerk an oath of office in the form and manner provided by law, and shall execute and give sufficient bond to the municipal corporation in the sum of ten thousand dollars, conditioned for the faithful performance of the duties of the office, which bond shall be approved by the judge of the district court of the county in which such city is situated, and filed with the clerk and recorder of the county in which such city is situated.

**History:** En. Sec. 12, Ch. 57, L. 1911; re-en. Sec. 5377, R. C. M. 1921; amd. Sec. 8, Ch. 535, L. 1975.

**Amendments**

The 1975 amendment substituted "him/her" for "him" and substituted "person" for "man" in the petition form in subsection (3); and substituted "an oath" for "his oath" and "the office" for "his office" in subsection (9).

**Compiler's Notes**

Sections 23-1220 to 23-1228, referred to in this section, were repealed by Sec. 248, Ch. 368, Laws 1969.

**11-3116. (5379) Bribery—false answers concerning qualifications of elector—voting by disqualified person.** Any person offering to give a bribe, either in money or other consideration, to any elector, for the purpose of influencing his vote at any election provided in this act, or any elector entitled to vote at any such election receiving and accepting such bribe or other consideration; any person who agrees, by promise or written statement, that he will do, or will not do, any particular act or acts, for the purpose of influencing the vote of any elector or electors at

any election provided in this act; any person making false answer to any of the provisions of this act relative to his qualifications to vote at such election; any person willfully voting or offering to vote at such election who has not met the residency requirements for voting as provided by the constitution of the state of Montana, or who is not of the minimum age provided by the constitution of the state of Montana, or is not a citizen of the United States, or knowing himself not to be a qualified elector of such precinct where he offers to vote; any person knowingly procuring, aiding, or abetting any violation hereof, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in a sum not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500); and be imprisoned in the county jail not less than ten (10) nor more than ninety (90) days.

History: En. Sec. 14, Ch. 57, L. 1911; re-en. Sec. 5379, R. C. M. 1921; amd. Sec. 1, Ch. 166, L. 1971.

#### Amendments

The 1971 amendment substituted "who has not met the residency requirements for voting as provided by the constitution

of the state of Montana, or who is not of the minimum age provided by the constitution of the state of Montana" for "who has not been a resident of this state for one year next preceding said election or who is not twenty-one years of age"; and made minor changes in style.

### 11-3127. (5389) Officers not to be interested in contracts, etc.

#### Compiler's Notes

Section 3, Ch. 489, Laws 1977, substi-

tuted "firefighters" in this section for "firemen."

**11-3129. Publication of report by council.** The council shall monthly print in pamphlet form a detailed itemized statement of all of the receipts and expenses of the city and a summary of its proceedings during the preceding month, and furnish printed copies of the statement to the state library, the city library, the daily newspaper of the city, and persons who apply for the statement at the office of the city clerk.

History: En. Sec. 26, Ch. 57, L. 1911; re-en. Sec. 5391, R. C. M. 1921; amd. Sec. 1, Ch. 52, L. 1943; amd. Sec. 55, Ch. 348, L. 1974.

#### Amendments

The 1974 amendment deleted a second sentence providing for the examination of books and accounts; and made minor changes in phraseology. For prior version, see parent volume.

### 11-3132. (5394) Repealed.

#### Repeal

Section 11-3132 (Sec. 29, Ch. 57, L. 1911; Sec. 3, Ch. 2, L. 1915), relating to recall

of elective officers, was repealed by Sec. 15, Ch. 364, Laws 1977.

## CHAPTER 32—COMMISSION-MANAGER FORM OF GOVERNMENT

#### Section

11-3207. Manner of conducting election—canvassing votes.

11-3214. Qualifications of commissioners—interest in contracts not allowed—holding any political office forbidden—accepting gratuities forbidden.

11-3215. Nomination of candidates—primary election.

11-3229. Bribery—false answers concerning qualifications of elector—voting by disqualified person.

11-3248. Compensation of commissioners and mayor.

11-3271. Election and term of city judge.

11-3271.1. Qualification of a city judge.



11-3271.2. Initial election.

11-3271.3. Vacancy in the office of city judge.

11-3283. Persons in classified service not affected by political or religious opinions or race.

### 11-3202. (5401) Submission of question to electors—petition, etc.

#### Filing

Filing petition seeking to reorganize city government with city clerk is equivalent to filing with the city council; city must hold the election petitioned for

within ninety days of initial filing with city clerk. State ex rel. Espelin v. City Council of City of Great Falls, 160 M 135, 500 P 2d 1194.

### 11-3207. (5406) Manner of conducting election—canvassing votes.

Such election shall be conducted, the vote canvassed, and the result declared in the same manner as provided by law in respect to other municipal elections.

The provisions of section 11-3215 are specifically to be followed in the special election except that the date of the primary election shall be at least thirty (30) days before the special election; provided further that the provisions of section 11-3218.1 shall be applicable to this section.

**History:** En. Sec. 7, Ch. 152, L. 1917; re-en. Sec. 5406, R. C. M. 1921; amd. Sec. 1, Ch. 161, L. 1973.

#### Amendments

The 1973 amendment added the second paragraph.

**11-3214. Qualifications of commissioners—interest in contracts not allowed—holding any political office forbidden—accepting gratuities forbidden.** Members of the commission shall be residents of the city or town and have the qualifications of electors. Commissioners and other officers and employees shall not be interested in the profits or emoluments of any contract, job, work, or service for the municipality, and shall not hold any partisan political office or employment. Any commissioner who shall cease to possess any of the qualifications herein required, shall forthwith forfeit his office, and any such contract in which any member is or may be interested, may be declared void by the commission.

No commissioner or other officer or employee of said city or town shall accept any frank, free ticket, pass or service directly or indirectly, from any person, firm or corporation upon terms more favorable than are granted to the public generally. Any violation of the provisions of this section shall be a misdemeanor and shall also be sufficient cause for the summary removal or discharge of the offender. Such provisions for free service shall not apply to policemen or firefighters in uniform or wearing their official badges, where the same is provided by ordinance, nor to any commissioner, nor to the city manager, nor to the city attorney, upon official business, nor to any other employee or official of said city on official business who exhibits written authority signed by the city manager.

**History:** En. Sec. 15, Ch. 152, L. 1917; re-en. Sec. 5413, R. C. M. 1921; amd. Sec. 4, Ch. 31, L. 1923; amd. Sec. 1, Ch. 327, L. 1974.

#### Amendments

The 1974 amendment deleted "and own real estate situated therein to the assessed value of not less than one thousand dol-

lars" from the end of the first sentence; deleted "shall not hold any other public office or employment, except in the state militia, as school trustees, or notary publics, and" in the second sentence after "officers and employees"; and added "and shall not hold any partisan political office or employment" at the end of the second sentence.

**11-3215. (5414) Nomination of candidates—primary election. (1)**  
 \* \* \* [Same as parent volume.]

(2) Any qualified elector of the municipality, who is the owner of real estate situated therein to the value of not less than one thousand dollars, desiring to become a candidate for commissioner, shall, at least thirty-five (35) days prior to said primary election, file with the clerk of the commission a statement of such candidacy in substantially the following form:

State of Montana,  
 County of .....

I, ....., being first duly sworn, say that I reside at ..... street, (city or town) of ....., county of ....., state of Montana; that I am a qualified voter therein; that I am a candidate for nomination to the office of commissioner to be voted upon at the primary election to be held on the last Tuesday of August, 19....., and I hereby request that my name be printed upon the official primary ballot for nomination by such primary election for such office.

(Signed).....

Subscribed and sworn to (or affirmed) before me by ..... on this ..... day of ....., 19.....

(Signed).....

And shall at the same time file therewith the petition of at least twenty-five qualified voters requesting such candidacy. Each petition shall be verified by one or more persons as to qualifications and residence, with street number, of each of the persons so signing the said petition, and the said petition shall be in substantially the following form:

(3) Petition Accompanying Nominating Statement.

The undersigned duly qualified electors of the (city, town) of ....., and residing at the places set opposite our respective names hereto, do hereby request that the name of (name of candidate) be placed on the ballot as a candidate for nomination to the office of commissioner at the primary election to be held on the last Tuesday of August, 19..... We further state that we know him/her to be a qualified elector of said (city, town), and a person of good moral character, and qualified, in our judgment, for the duties of such office, and we individually certify that we have not signed similar petitions greater in number than the number of commissioners to be chosen at the next general municipal election.

Names of Qualifying Electors	Number	Street
(Space for Signatures.)		

State of Montana,  
 County of .....

....., being duly sworn, deposes and says, that he knows the qualifications and residence of each of the persons signing the appended petition, and that such signatures are genuine, and the signatures of the persons whose names they purport to be.

(Signed) .....

Subscribed and sworn to before me this ..... day of ....., 19.....  
 ..... (Notary Public),

This petition, if found insufficient, shall be returned to ..... at  
 No. .... street, ....., Montana.

(4) and (5) \* \* \* [Same as parent volume.]

**History:** En. Sec. 16, Ch. 152, L. 1917;  
 re-en. Sec. 5414, R. C. M. 1921; amd. Sec.  
 1, Ch. 36, L. 1961; amd. Sec. 1, Ch. 2, L.  
 1973; amd. Sec. 9, Ch. 535, L. 1975.

The 1975 amendment substituted "him/  
 her" for "him", and substituted "person"  
 for "man" in the petition form in subsec-  
 tion (3).

#### Amendments

The 1973 amendment advanced the filing  
 date specified in the preliminary para-  
 graph of subdivision (2) from ten to  
 thirty-five days before the primary; and  
 made minor style changes in the state-  
 ment and petition forms.

#### Effective Date

Section 2 of Ch. 2, Laws 1973 provided  
 that the act should be in effect from and  
 after its passage and approval. Approved  
 January 11, 1973.

### 11-3216. (5415) Ballots—form, contents, etc.

#### Compiler's Notes

Sections 23-1220 to 23-1228, referred to

in this section, were repealed by Sec. 248,  
 Ch. 368, Laws 1969.

### 11-3220. (5419) Repealed.

#### Repeal

Section 11-3220 (Sec. 21, Ch. 152, L.  
 1917), relating to recall of commissioners,

was repealed by Sec. 15, Ch. 364, Laws  
 1977.

**11-3229. (5428) Bribery—false answers concerning qualifications of  
 elector—voting by disqualified person.** Any person offering to give a  
 bribe, either in money or other consideration, to any elector for the purpose  
 of influencing his vote at any election provided in this act, or any elector  
 entitled to vote at any such election receiving and accepting such bribe  
 or other consideration; any person who agrees, by promise or written  
 statement, that he will do, or will not do, any particular act or acts, for  
 the purpose of influencing the vote of any elector or electors at any elec-  
 tion provided in this act; any person making false answer to any of the  
 provisions of this act relative to his qualifications to vote at such election;  
 any person willfully voting or offering to vote at such election, who has  
 not met the residency requirement of the state of Montana, or is not a citi-  
 zen of the United States, or knowing himself not to be a qualified elector  
 of such precinct where he offers to vote; any person knowingly procuring,  
 aiding, or abetting any violation hereof, shall be deemed guilty of a misde-  
 meanor, and, upon conviction, shall be fined a sum of not less than one  
 hundred dollars (\$100) nor more than five hundred dollars (\$500), or be  
 imprisoned in the county jail not less than ten (10) nor more than ninety  
 (90) days, or both such fine and imprisonment.

**History:** En. Sec. 30, Ch. 152, L. 1917;  
 re-en. Sec. 5428, R. C. M. 1921; amd. Sec.  
 2, Ch. 166, L. 1971; amd. Sec. 4, Ch. 100,  
 L. 1973.

the constitution of the state of Montana"  
 for "who has not been a resident of this  
 state for one year next preceding said  
 election, or who is not twenty-one years of  
 age"; and made minor changes in style.

#### Amendments

The 1971 amendment substituted "who  
 has not met the residency requirement of

The 1973 amendment deleted "of the  
 constitution" in the language substituted  
 by the 1971 amendment.



**Effective Date**

Section 3 of Ch. 166, Laws 1971 provided the act should be in effect from and after

its passage and approval. Approved March 3, 1971.

**11-3248. (5447) Compensation of commissioners and mayor.** The salary of each commissioner may be as follows: The salary of each commissioner shall be as established by ordinance in all classes of cities. The salary of the commissioner acting as mayor may be one and one-half times that of the other commissioners.

**History:** En. Sec. 49, Ch. 152, L. 1917; amd. Sec. 2, Ch. 44, L. 1919; re-en. Sec. 5447, R. C. M. 1921; amd. Sec. 1, Ch. 10, L. 1949; amd. Sec. 1, Ch. 71, L. 1965; amd. Sec. 1, Ch. 289, L. 1969; amd. Sec. 1, Ch. 33, L. 1971.

serted "For" at the beginning of the second sentence and substituted "the annual salary \* \* \* (\$2,500)" for "not to exceed forty dollars (\$40.00)."

The 1971 amendment substituted the first sentence after the colon for: "For each formal meeting of record attended, cities or towns with less than twenty-five thousand inhabitants, twenty-five dollars (\$25); provided that no more than one (1) fee shall be paid for any one (1) day. For cities with more than twenty-five thousand inhabitants, the annual salary of each commissioner shall not exceed two thousand five hundred dollars (\$2,500)."

**Amendments**

The 1969 amendment divided the former first sentence into two sentences; substituted "each formal meeting of record" for "each meeting," "twenty-five dollars (\$25)" for "twenty dollars (\$20)" and made minor changes in the proviso; in-

**11-3253. (5451) Repealed.****Repeal**

Section 11-3253 (Sec. 54, Ch. 152, L. 1917; Sec. 1, Ch. 208, L. 1953), relating to

annual audit of administrative department of municipalities, was repealed by Sec. 107, Ch. 348, Laws of 1974.

**11-3266. (5465) Department of public safety, etc.****Compiler's Notes**

Section 3, Ch. 489, Laws 1977, substi-

tuted "firefighters" in this section for "firemen."

**11-3271. (5470) Election and term of city judge.** In each municipality having a commission-manager form of government, a city judge shall be elected every 4 years in a nonpartisan election held in conjunction with the regularly scheduled municipal election. The city judge shall hold office for a term of 4 years.

**History:** En. Sec. 72, Ch. 152, L. 1917; re-en. Sec. 5470, R. C. M. 1921; amd. Sec. 14, Ch. 31, L. 1923; amd. Sec. 1, Ch. 219, L. 1977.

tion which read: "The commission shall appoint a police judge who shall have the power and authority now conferred by existing laws and shall hold his office at the will of the commission."

**Amendments**

The 1977 amendment rewrote this sec-

**11-3271.1. Qualification of a city judge.** The qualifications to hold the office of city judge shall be set by ordinance by the commission. The ordinance shall be consistent with any rules adopted by the Montana supreme court on city judge qualifications.

**History:** En. 11-3271.1 by Sec. 2, Ch. 219, L. 1977.

**Title of Act**

An act to provide for the nonpartisan election of city judges under the commission-manager form of government and to

provide for a 4-year term for such city judges; providing for the initial election; providing for qualification of a city judge; providing for filling a vacancy in the office of city judge; amending section 11-3271, R. C. M. 1947; and providing an immediate effective date.

**11-3271.2. Initial election.** The first election of a city judge under this act shall be held in conjunction with the next regularly scheduled municipal election held 30 days or more after the effective date of this act.

**History:** En. 11-3271.2 by Sec. 3, Ch. 219, L. 1977.

**11-3271.3. Vacancy in the office of city judge.** If a vacancy occurs in the office of city judge, the commission shall appoint a qualified individual to serve for the remainder of the term.

**History:** En. 11-3271.3 by Sec. 4, Ch. 219, L. 1977.

**Effective Date**

Section 5 of Ch. 219, Laws 1977 provided the act should be effective on its passage and approval. Approved April 4, 1977.

**11-3283. (5482) Persons in classified service not affected by political or religious opinions or race.** No person in the classified service or seeking admission thereto may be appointed, reduced, removed, or in any way favored or discriminated against, because of political opinions or affiliations or because of race, color, creed, or religion.

**History:** En. Sec. 84, Ch. 152, L. 1917; re-en. Sec. 5482, R. C. M. 1921; amd. Sec. 1, Ch. 188, L. 1975; amd. Sec. 1, Ch. 38, L. 1977.

**Amendments**

The 1975 amendment deleted two sentences at the end of the section which prohibited municipal officers from receiving

contributions for a political party, and prohibited classified workers from political participation other than voting. For prior version, see parent volume.

The 1977 amendment substituted "may be appointed" for "shall be appointed"; substituted "creed or religion" for "religious beliefs" at the end of the section; and made minor changes in punctuation.

**CHAPTER 33—COMMISSION-MANAGER FORM OF GOVERNMENT (continued)**

**Section**

11-3326. Official oath.

11-3332. Repealing clause and exception.

**11-3303. (5487) Survey and plats of lands subdivided for sale.**

**Compiler's Notes**

Sections 11-601 to 11-614 referred to in

the text in the parent volume were repealed by Sec. 20, Ch. 500, Laws 1973.

**11-3310. (5494) Vacating or changing names of streets, etc.**

**Standing**

Plaintiffs whose property abutted a portion of the street affected had standing to bring action to invalidate ordinance vacating street for parking facilities,

even though plaintiffs' property did not abut portion of street vacated. *Kemmer v. City of Bozeman*, 158 M 354, 492 P 2d 211.

**11-3326. (5510) Official oath.** Every officer of the municipality shall, before entering upon the duties of his office, take and subscribe to the constitutional oath of office, to be filed and kept in the office of the commission, that he will in all respects faithfully discharge the duties of his office.

**History:** En. Sec. 113, Ch. 152, L. 1917; re-en. Sec. 5510, R. C. M. 1921; amd. Sec. 2, Ch. 7, L. 1973.

**Amendments**

The 1973 amendment substituted "the constitutional oath of office" for "an oath or affirmation."

**11-3332. Repealing clause and exception.** This act does not repeal or modify sections 70-101 through 70-135, as amended, or section 70-301, and this act does not curtail or impair the power or authority of the public service commission and any order made, action taken, or regulation provided by the commission shall supersede and nullify any order, regulation, ordinance or other action authorized by this act in conflict with any such order, regulation, or action, of said public service commission. However, the annual report relating to the operation of a public utility owned by a municipality operating under this act, to be made to the public service commission, shall conform to the fiscal year of the city or town as established by this act.

**History:** En. Sec. 119, Ch. 152, L. 1917; re-en. Sec. 5516, R. C. M. 1921; amd. Sec. 20, Ch. 31, L. 1923; amd. Sec. 6, Ch. 315, L. 1974.

**Amendments**

The 1974 amendment deleted "All laws and parts of laws in conflict herewith are hereby repealed" from the beginning of the section; and made changes in phraseology, punctuation and style.

**CHAPTER 34—CITY AND COUNTY CONSOLIDATED GOVERNMENT**

**11-3403. (5520.3) Form of petition, etc.**

**Compiler's Notes**

Section 23-105, referred to in this sec-

tion in the parent volume was repealed by Sec. 248, Ch. 368, Laws 1969.

**11-3405. (5520.5) Special election of commission, etc.**

**Compiler's Notes**

Section 23-105, referred to in this sec-

tion, was repealed by Sec. 248, Ch. 368, Laws 1969.

**CHAPTER 35—CITY AND COUNTY CONSOLIDATED GOVERNMENT (Continued)**

**Section**

11-3524. Retention of firefighters' rights when local government consolidated.

**11-3524. (5520.84) Retention of firefighters' rights when local government consolidated.** (1) A firefighter employed by a fire department established as required by law in a city or town of the county prior to the election and qualification of a commission under this act or other acts of consolidation or disincorporation has the same job tenure rights as though no election and qualification had taken place.

(2) A firefighter who has vested rights in a disability and pension fund maintains prior vested rights in the fund upon its transfer to a consolidated county municipality. A disability and pension fund, established as required by law in a city or town of the county prior to the election and qualification of a commission under this act or other acts of consolidation or disincorporation, shall be continued as one such fund for the fire department of the municipality, subject, however, to the prior vested rights of firefighters employed by any fire department, established as required by law in a city or town of the county prior to the election and qualification of a commission under this act or other acts of consolidation or disincorporation. The board of trustees of the disability and pension fund shall continue as provided in 11-1913. Except as provided in this section, the



disability and pension fund shall be continued and administered in the manner prescribed by law for such funds.

**History:** En. Sec. 83, Ch. 121, L. 1923; amd. Sec. 1, Ch. 192, L. 1961; amd. Sec. 1, Ch. 34, L. 1975; amd. Sec. 31, Ch. 157, L. 1977.

#### Amendments

The 1975 amendment inserted "or other acts of consolidation or disincorporation" after "under this act" in three places; substituted "continue as set forth in sections

11-1913 and 11-1922, R. C. M. 1947" at the end of the fourth sentence for express instructions for selection of specific officers of the board of trustees. For prior version, see parent volume.

The 1977 amendment inserted the subsection designations; deleted a reference to 11-1922 from the end of the next-to-last sentence of subsection (2); and made minor changes in style and phraseology.

### 11-3540. (5520.100) Repealed.

#### Repeal

Section 11-3540 (Sec. 99, Ch. 121, L. 1923), relating to removal of commission-

ers, was repealed by Sec. 15, Ch. 364, Laws 1977.

## CHAPTER 37—PARKING

### Section

- 11-3701. Purpose of act.
- 11-3702. Definitions.
- 11-3704. Members of commission—appointment—qualifications—vesting of commission powers—expenses and compensation—term of office—chairman—removal.
- 11-3705. Estimate and appropriation of money required—report of transactions to be filed.
- 11-3707. Commission a public body—powers specified.
- 11-3708. Acquisition of existing parking facilities.
- 11-3709. Lease—bids.
- 11-3710. Planning, zoning and building laws—co-operation of city officers and departments—payment in lieu of taxation.
- 11-3711. Revenue bonds.
- 11-3712. Types of bonds—sources from which payable.
- 11-3717. Interest on bonds—redemption.
- 11-3718. Signatures on bonds.
- 11-3720. Sale of bonds—payment of interest—temporary bonds—tax exemption—legal investments—refunding bonds.
- 11-3723. Contracts—indenture—lease—incorporation by reference—rights of obligee.

**11-3701. Purpose of act.** It is hereby determined and declared that excessive curb parking of motor vehicles in urban and metropolitan areas, and the lack of adequate off-street parking facilities in some cities, is against the public interest; and the purpose of this act is to provide means whereby cities, in which additional off-street parking facilities is considered necessary, may obtain and provide same, and whereby such cities may regulate on-street and off-street parking in a co-ordinated manner.

**History:** En. Sec. 1, Ch. 223, L. 1951; amd. Sec. 1, Ch. 127, L. 1955; amd. Sec. 2, Ch. 77, L. 1975.

#### Amendments

The 1975 amendment added "and whereby such cities may regulate on-street and off-street parking in a co-ordinated manner."

**11-3702. Definitions.** The following terms, wherever used or referred to in this chapter, shall have the following respective meanings, unless a different meaning clearly appears from the context:

(a) "Commission" or "parking commission" shall mean any of the public corporations which may be created by a city and any city which may exercise the powers of a parking commission pursuant to resolution adopted by its legislative body under the provisions of section 11-3703.

(b) "The city" shall mean the particular city for which a particular commission may be created, or which may act as such a commission pursuant to resolution of its legislative body.

(c) "Legislative body" shall mean the city council or other body in which the general legislative powers of the city are vested.

(d) to (g). \* \* \* [Same as parent volume.]

(h) "Project" shall mean any acquisition, improvement, construction, or undertaking of any kind authorized by this chapter.

(i) "Indenture" as used in this chapter means ordinance, resolution, or indenture which may be passed, adopted or entered into by a commission or by the legislative body of a city and "clause" includes article, section, subsection, paragraph, sentence or provision.

**History:** En. Sec. 2, Ch. 223, L. 1951; amd. Sec. 1, Ch. 401, L. 1973.

#### Amendments

The 1973 amendment substituted "created by a city" in subdivision (a) for "created by section 11-3704 of this act"; added "and any city which may exercise the powers of a parking commission pursuant to resolution adopted by its legis-

lative body under the provisions of section 11-3703" at the end of subdivision (a); substituted "or which may act as such a commission pursuant to resolution of its legislative body" at the end of subdivision (b) for "or the legislative body which may act as such a commission"; and made minor changes in phraseology and style.

**11-3704. Members of commission—appointment—qualifications—vesting of commission powers—expenses and compensation—term of office—chairman—removal.** When the legislative body of a city first adopts a resolution declaring need for a parking commission to function, the mayor, with the approval of the legislative body, shall appoint not less than five (5) nor more than seven (7) electors of the city as members of the commission. The number of members of such commission, once established, may be changed within these limits from time to time as desired by subsequent resolutions of the legislative body of the city, provided, however, that a resolution to reduce shall not require resignation of any member prior to completion of his appointed term. The powers of each commission shall be vested in the members thereof then in office. Members shall receive their actual and necessary expenses, including traveling expenses and may receive such other compensation as the legislative body may prescribe.

Three of the members who are first appointed shall be designated to serve for terms of one, two, and three years, respectively, from the date of their appointments, and two shall be designated to serve for terms of four years from the date of their appointments, except that for a seven (7) member commission there shall be two additional appointments of two (2) years and three (3) years respectively. Thereafter members shall be appointed as aforesaid for a term of office of four years, except that all vacancies occurring during a term shall be filled for the unexpired term. A member shall hold office until his successor has been appointed and has qualified.

The appointing officer shall designate which of the members of the commission shall be the first chairman, but when the office of chairman of the commission becomes vacant thereafter, the commission shall elect a chairman from among its members. The term of office as chairman of the

commission, unless otherwise prescribed by the legislative body of the city, shall be for the calendar year, or for that portion thereof remaining after each such chairman is designated or elected.

A member of a commission may be removed by the mayor with the consent of the legislative body of the city.

**History:** En. Sec. 4, Ch. 223, L. 1951; less than five (5) nor more than seven (7) electors" for "five (5) electors" in the first sentence; inserted the second sentence; and added the exception for a seven-member commission in the second paragraph.

#### Amendments

The 1975 amendment substituted "not

**11-3705. Estimate and appropriation of money required—report of transactions to be filed.** (1) When any city or the commission created for it becomes authorized to transact business and exercise the powers of a parking commission, the legislative body of the city may, subject to its fiscal law, at that time, and from time to time thereafter, make an estimate of the amount of money required for administrative purposes of the commission, and may appropriate such amounts to the commission as it deems necessary, subject to such conditions as the legislative body may prescribe.

(2) The legislative body shall cause a detailed report of all transactions of the parking commission, including a statement of all revenues and expenditures, to be filed with it at quarterly, semiannual or annual intervals as the legislative body may prescribe and shall cause to be published at least once annually in a newspaper of general circulation, published in the city, or if none is so published then in such newspaper of general circulation as it may deem most likely to give notice to all residents of the city, a summary statement of all its financial affairs, which shall be audited annually by independent certified public accountants.

**History:** En. Sec. 5, Ch. 223, L. 1951; amended. Sec. 2, Ch. 401, L. 1973.

#### Amendments

The 1973 amendment designated the two paragraphs as subsections (1) and (2); inserted "any city or" near the beginning of subsection (1); substituted "the powers of a parking commission" for "its powers" near the beginning of subsection (1); substituted "The legislative body shall cause a detailed report of all transactions of the parking commission . . . to

be filed with it" for "Each such commission shall file with the legislative body a detailed report of all its transactions" at the beginning of subsection (2); substituted "cause to be published" for "publish" in the middle of subsection (2); inserted "summary" before "statement of all its financial affairs" near the end of subsection (2); and substituted "which shall be audited annually" for "audited" near the end of subsection (2); and made minor changes in phraseology.

**11-3707. Commission a public body—powers specified.** Each commission shall constitute a public body, corporate and politic, exercising public and essential governmental function, and subject to the limitations imposed by this act, shall have the following powers in addition to the others herein granted:

(a) to (c) \* \* \* [Same as parent volume.]

(d) For the purpose of off-street parking, to purchase, lease, obtain option upon, acquire by gift, grant, bequest, devise or otherwise, any real or personal property, or any interest therein, together with any improvements thereon; to acquire by the exercise of the power of eminent domain any property in accordance with the applicable provisions of the law of



eminent domain, except that no property of a state public body may be acquired without its consent, upon approval of the city council; to sell, lease, exchange, transfer, assign, or otherwise dispose of any real or personal property or any interest therein, provided such transactions are for off-street parking purposes; to lay out, open, extend, widen, straighten, establish, or change the grade, in whole or in part, of public parking facilities and public rights of way necessary or convenient therefor; to insure or provide for the insurance of any real or personal property or operations of the commission against risks or hazards; to acquire, construct, rent, lease, maintain, and repair, such real and personal property, or any portion thereof either on behalf of the commission or as an agent of the city, including the leasing of the operation thereof, the leasing for incidental commercial purposes of surplus space or space which it is not economical to use for parking purposes, and as an incident to the operation of any parking facility, when in the judgment of the commission it is convenient or necessary to permit such use in order to utilize properly such land as a parking facility, provided that the city or parking commission shall be prohibited from operating any such additional, secondary and incidental facilities; provided, however, that such incidental use or uses must be secondary to the primary use as a parking facility, and if a building is erected on such property for the purpose of parking motor vehicles, then such incidental use or uses of such building shall be confined to the street level and/or below street level of such building, and such incidental use or uses at street level may occupy the entire surface area of the property less that area required for vehicular and pedestrian movement if at least two higher levels each of equal or greater area are devoted entirely to parking purposes; provided that other provisions notwithstanding, the commission or the city may lease air rights above such building; provided, further, that the commission or the city shall lease such space to private operators at rates comparable to the existing market rate for similar taxable space at the location; to receive, control, and order the expenditure of, any and all moneys and funds pertaining to parking facilities or related properties, including, without limiting the generality of this provision, (i) all revenues derived from operations of the commission, (ii) all money appropriated or made available by the city pursuant to section 11-3707, or otherwise, (iii) the proceeds of all financial aid or assistance by the city, federal or state governments, (iv) the proceeds of assessments levied, (v) the proceeds of all revenue bonds issued pursuant to this act by the city for parking facilities.

(e) To regulate on-street parking where it remains in use, in co-ordination with off-street parking, subject to traffic regulations imposed by the state; such parking regulations may include, without limiting the generality of this provision, the determination of (i) parking locations, (ii) variable parking durations, (iii) variable parking rate schedules, and (iv) enforcement policies and procedures.

(f) To invest any funds held in reserve or sinking funds or any funds not required for immediate disbursement in property or securities in which cities may legally invest funds subject to their control, but no such investment shall be made in contravention of any covenant or agreement

made with the holders of any revenue bonds of the commission theretofore issued and then outstanding.

(g) To exercise all or any part or combination of the powers herein granted.

(h) To do and perform any and all other acts and things necessary, convenient, desirable or appropriate to carry out the provisions of this act.

**History:** En. Sec. 7, Ch. 223, L. 1951; amd. Sec. 4, Ch. 77, L. 1975.

#### Amendments

The 1975 amendment deleted "and in any event the portion of the land devoted to such incidental use or uses shall not exceed ten per cent of the surface area of such property" in subdivision (d) after "primary use as a parking facility"; substituted in subdivision (d) "shall be confined to the street level and/or below street level of such building, and such incidental use or uses at street level may occupy the entire surface area of the property less that area required for vehicular

and pedestrian movement if at least two higher levels each of equal or greater area are devoted entirely to parking purposes" for "shall not occupy more than ten per cent of the floor area"; inserted "provided that other provisions notwithstanding, the commission or the city may lease air rights above such building" in subdivision (d); inserted "at rates comparable to the existing market rate for similar taxable space at the location" after "private operators" in subdivision (d); inserted subdivision (e); and redesignated former subdivisions (e), (f) and (g) as subdivisions (f), (g) and (h).

**11-3708. Acquisition of existing parking facilities.** No existing parking facility shall be acquired by the exercise of the power of eminent domain by a commission or the city except after public hearing following notice of the date, time, place, and purpose of such hearing published once not less than ten nor more than twenty days prior to the date of such hearing.

**History:** En. Sec. 8, Ch. 223, L. 1951; amd. Sec. 5, Ch. 77, L. 1975.

#### Amendments

The 1975 amendment deleted from the

end of the section a proviso prohibiting acquisition of facilities being used for off-street parking, except for projects of a certain size. For prior version, see parent volume.

**11-3709. Lease—bids.** The commission or city may lease any project acquired by it under the provisions of this chapter to the highest responsible bidder after notice, which shall consist of the publication of a notice inviting bids, by two or more insertions thereof, not less than five (5) days apart, in a newspaper of general circulation printed and published in such city, or city and county, which publication shall be commenced not less than fifteen (15) days prior to the date set in the notice for the opening of bids; or if there be no newspaper of general circulation printed or published therein, by posting copies of said notice inviting bids in at least three (3) public places in the city, or city and county, not less than fifteen (15) days prior to the date set in the notice for the opening of bids. Such notice shall distinctly and specifically describe the project and the facilities in connection therewith which are to be leased, the period of time for which said project is to be leased and the minimum rental to be paid under such lease; provided if the commission or city shall by resolution entered upon its minutes find and determine that the purposes of this chapter will not be accomplished and the public interest will not be served by lease of any particular project for operation as a private parking project, the commission may lease such project to the city or the city may operate any



such project itself as a municipal parking project, subject to the ordinances, rules and regulations of the city pertaining to municipal parking projects.

**History:** En. Sec. 9, Ch. 223, L. 1951; amd. Sec. 3, Ch. 127, L. 1955; amd. Sec. 3, Ch. 401, L. 1973.

#### Amendments

The 1973 amendment substituted "municipal parking project" for "municipal parking lot" twice near the end of the section; and made minor changes in style.

**11-3710. Planning, zoning and building laws—co-operation of city officers and departments—payment in lieu of taxation.** All parking facilities of a commission shall be subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which the parking facility is situated. In the planning and location of any parking facility, a commission shall be subject to the relationship of the facility to any master plan or sections of a master plan for the development of the area in which the commission functions. In order that there may be no unnecessary duplication of effort or expense, the commission shall have access for the purposes of the commission to the services and facilities of the city planning department, the city engineer, the police department, the fire department and such other departments and offices of the city as may be appropriate therefor. The legislative body may by resolution provide for a sum to be paid annually by the commission to the city, which shall not exceed the amount the commission would be required to pay in ad valorem taxes if it were a private entity owning the same property, and shall not be paid from any funds needed for current operation, maintenance, debt service, or repairs, or for compliance with any other provisions of indentures securing obligations of the commission.

**History:** En. Sec. 10, Ch. 223, L. 1951; amd. Sec. 4, Ch. 401, L. 1973.

#### Amendments

The 1973 amendment substituted "by resolution" near the beginning of the last sentence for "in the resolution declaring need for a parking commission to

function"; and added "and shall not be paid from any funds needed for current operation, maintenance, debt service, or repairs, or for compliance with any other provisions of indentures securing obligations of the commission" at the end of the section.

**11-3711. Revenue bonds.** The commission shall have power to issue revenue bonds in its name or in that of the city. No such bonds or the interest thereon shall be payable from or secured by a pledge or mortgage of any funds or properties of the city except those expressly enumerated in section 11-3712.

**History:** En. Sec. 11, Ch. 223, L. 1951; amd. Sec. 5, Ch. 401, L. 1973.

#### Amendments

The 1973 amendment added "or in that of the city" to the end of the first

sentence; and substituted the second sentence for two sentences which provided that bonds should constitute obligations of the commission only and not of the city or state.

**11-3712. Types of bonds—sources from which payable.** A commission may issue such types of revenue bonds as it may determine, including revenue bonds on which the principal and interest are payable:

(a) Exclusively from the income and revenues of the parking facilities financed with the proceeds of such bonds;

(b) exclusively from the income and revenues of certain designated



parking facilities whether or not they were financed in whole or in part with the proceeds of such bonds;

(c) from a charge on such revenues either prior or subordinate to the payment of any designated part or all of the costs of operation and maintenance and other expenses of such facilities;

(d) from any contributions or other financial assistance from the state or federal governments;

(e) from any or all on-street parking meter revenues of the city which may be pledged and appropriated by or under authority of the legislative body for this purpose until the bonds are fully paid;

(f) from the collections of special assessments, and interest thereon, levied to finance the cost of parking facilities under any of the provisions of Title 11, chapter 22, which may be pledged and appropriated by or under authority of the legislative body for the payment of revenue bonds issued under the provisions of this section 11-3712 and are not pledged for the payment of special improvement district bonds;

(g) from a reserve which may be established and agreed to be maintained by the transfer of such other city funds as may be pledged and appropriated, by or under authority of the legislative body, to meet deficiencies in the reserve until the bonds are fully paid; provided that the funds from which such transfers are made shall be reimbursed from the next collections of other revenues enumerated in this section 11-3712 which are not needed for full compliance with provisions of indentures securing all outstanding obligations of the commission, and nothing herein shall permit the levy of taxes at any time in excess of the deficiency then existing in the reserve, but such tax as may be needed, with other funds determined by the legislative body to be available to meet the deficiency, may and shall be levied and shall not be subject to any limitation of rate or amount provided in any other law;

(h) from the proceeds of sale upon foreclosure of any mortgage of an off-street parking facility, made by or under authority of the legislative body to secure the payment of any revenue bonds issued under this section 11-3712, provided that no such mortgage shall be placed upon any property of the city or commission unless the cost of such property to the city has been paid from the proceeds of such bonds; or

(i) any combination of these sources.

**History:** En. Sec. 12, Ch. 223, L. 1951; amd. Sec. 6, Ch. 401, L. 1973.

#### Amendments

The 1973 amendment deleted "or with such proceeds together with financial assistance from the state or federal governments in aid of such projects" from the end of subdivision (a); substituted the present subdivision (c) for a subdivision reading "from its revenues generally"; inserted "on-street" before "parking meter revenues" in subdivision (e); sub-

stituted "pledged and appropriated by or under authority of the legislative body" in subdivision (e) for "appropriated by the governing body of the city"; inserted "for this purpose until the bonds are fully paid" at the end of subdivision (e); inserted new subdivisions (f), (g), (h); redesignated former subdivision (f) as (i); deleted two final sentences which authorized the pledge and allocation of parking meter revenues; and made minor changes in phraseology and style.

**11-3717. Interest on bonds—redemption.** Revenue bonds shall bear interest, payable annually or semiannually or in part annually and in part semiannually. Prior to the issuance of bonds the commission may fix

limitations or restrictions on the payment of interest. Bonds may be callable upon such terms, conditions, and upon such notice as the commission may determine, and upon the payment of the premium fixed by the commission in the proceedings for the issuance of the bonds. No bond is subject to call or redemption prior to its fixed maturity date unless the right to exercise such call is expressly stated on the face of the bond. The commission may provide for the payment of the principal and interest of bonds at any place within or without the state of Montana in specified coin or currency of the United States.

History: En. Sec. 17, Ch. 223, L. 1951;  
amd. Sec. 20, Ch. 234, L. 1971.

of not to exceed six (6) per cent per annum" after "bear interest" in the first sentence.

#### Amendments

The 1971 amendment deleted "at a rate

**11-3718. Signatures on bonds.** All of the signatures on said bonds and on the interest coupons thereof may be printed, lithographed or engraved facsimiles except one signature of an officer of the city or commission or a representative of the trustee, which shall be manually affixed. If any of the officers whose signatures appear upon the bonds or coupons cease to be officers before delivery of the bonds or coupons, their signatures are nevertheless valid and of the same force and effect as if the officers had remained in office until the delivery of the bonds and coupons.

History: En. Sec. 18, Ch. 223, L. 1951;  
amd. Sec. 7, Ch. 401, L. 1973.

#### Amendments

The 1973 amendment substituted "one signature of an officer of the city or commission or representative of the trustee which shall be manually affixed" for

"the countersignature of the clerk or other officer of the commission designated by the commission which countersignature shall be manually affixed" at the end of the first sentence; and deleted "or countersignatures" following "signatures" in the second sentence.

**11-3720. Sale of bonds—payment of interest—temporary bonds—tax exemption—legal investments—refunding bonds.** The commission may fix terms and conditions for the public or private sale or other disposition of any authorized issue of bonds. The commission may sell bonds at not less than ninety-five per cent (95%) of their par or face value. Interest on bonds may be paid out of the proceeds of the sale of the bonds during the actual construction of any project for the acquisition, construction or completion of which the bonds have been issued, and for a period of not to exceed two (2) years thereafter as provided for in the indenture. Pending the actual issuance or delivery of revenue bonds, the commission may issue temporary or interim bonds, certificates or receipts of any denomination whatsoever, and with or without coupons, to be exchanged for definitive bonds when ready for delivery, or to be paid at or before maturity, with accrued interest, from the proceeds of the definitive bonds. All such revenue bonds, and the interest or income therefrom, are exempt from all taxation in this state, other than gift, inheritance and estate taxes. All bonds issued under this chapter shall be legal investments for both public and private funds. The commission may provide for the issuance, sale, or exchange of refunding bonds for the purpose of redeeming or retiring any revenue bonds issued by the commission. All provisions of this chapter applicable

to the issuance of revenue bonds are applicable to the funding or refunding bonds and to the issuance, sale or exchange thereof.

**History:** En. Sec. 20, Ch. 223, L. 1951; amd. Sec. 8, Ch. 401, L. 1973.

#### Amendments

The 1973 amendment inserted "public or private" before "sale or other disposition" in the first sentence; substituted "not less than ninety-five per cent (95%) of" for "less than" in the middle of the second sentence; deleted "but no bond may be sold at a price below the par or face value thereof which would result in a sale price yielding to the purchaser an average of more than six (6) per cent per

annum, payable semiannually, according to standard table of bond values" from the end of the second sentence; deleted the former third sentence authorizing the commission to provide for security of the bonds; deleted the former fifth sentence authorizing a lien on any project arising from the proceeds; inserted "or be paid at or before maturity, with accrued interest, from the proceeds of the definitive bonds" at the end of the present third sentence; and made minor changes in style.

**11-3723. Contracts—indenture—lease—incorporation by reference—rights of obligee.** Every contract entered into by the commission for the use of any project or the services or facilities thereof, acquired, constructed or completed from the proceeds of the sale of revenue bonds shall incorporate by reference the provisions of any indenture pursuant to which the bonds were issued. An obligee of a commission shall have the right in addition to all other rights which may be conferred on such obligee, subject only to any contractual restrictions binding upon such obligee:

(a) (To Compel Performance of Contract.) By mandamus, suit, action or proceeding at law or in equity to compel said commission and the members, officers, agents, or employees thereof to perform each and every term, provision, and covenant contained in any contract of said commission with or for the benefit of such obligee, and to require the carrying out of any or all such covenants and agreements of said commission and the fulfillment of all duties imposed upon said commission by this chapter.

(b). \* \* \* [Same as parent volume.]

**History:** En. Sec. 23, Ch. 223, L. 1951; amd. Sec. 9, Ch. 401, L. 1973.

charges; and made a minor change in style.

#### Amendments

The 1973 amendment deleted from the first paragraph a second sentence relating to the obligation to fix sufficient fees and

#### Effective Date

Section 10 of Ch. 401, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 21, 1973.

### CHAPTER 38—CITY OR CITY-COUNTY PLANNING BOARDS

#### Section

- 11-3801. City planning boards, county planning boards and city-county planning boards authorized—purpose of act.
- 11-3803. Definitions.
- 11-3810. County planning boards and city-county planning boards—members—term of officer members and citizen members.
- 11-3811. Vacancies.
- 11-3812. Citizen members of county planning board and city-county planning board—qualifications.
- 11-3815. Representation of additional cities, towns, or county on existing boards.
- 11-3815.1. Joint or consolidated planning boards.
- 11-3819. Members not to receive salary.
- 11-3825. Funds for operation—tax levy authority.
- 11-3830. Jurisdictional area.



- 11-3830.2. Jurisdictional area—county planning board.
- 11-3831. Master plan—contents.
- 11-3842. Plats of subdivisions—approval by planning board.
- 11-3842.1. Advice of planning board required.
- 11-3859. Citation of subdivision act.
- 11-3860. Statement of purpose.
- 11-3861. Definitions.
- 11-3862. Surveys required—exceptions—standards for monumentation.
- 11-3863. Enforcement by governmental subdivisions—adoption of regulations—public hearing.
- 11-3864. Dedications of portions of subdivisions to the public—cash donations in lieu of dedications—waivers.
- 11-3865. Required abstract or title insurance—certification by city or county attorney.
- 11-3866. Submission of subdivision plat to governing body—notice—hearing—approval—disapproval.
- 11-3867. Filing of subdivision plat with county recorder—review of final subdivision plats and certificates of survey by examining land surveyor.
- 11-3868. Fees.
- 11-3869. Covenants run with the land.
- 11-3870. Vacation of plat—easements of utilities.
- 11-3871. Donations or grants to public considered a grant to donee.
- 11-3872. Certificate of survey—when required—contents—form.
- 11-3873. Index of plats to be kept by county clerk and recorder.
- 11-3874. Correction of survey—at governing body's expense.
- 11-3875. Administration of oaths by registered land surveyor.
- 11-3876. Violation—misdemeanor.

**11-3801. City planning boards, county planning boards and city-county planning boards authorized—purpose of act.** The governing body of any city or town, the governing bodies of more than one city or town, or the governing body of any county, or any combination thereof, may create a planning board in order to promote the orderly development of its governmental units and its environs. It is the object of this legislation to encourage local units of government to improve the present health, safety, convenience, and welfare of their citizens and to plan for the future development of their communities to the end that highway systems be carefully planned, that new community centers grow only with adequate highway, utility, health, educational, and recreational facilities; that the needs of agriculture, industry, and business be recognized in future growth; that residential areas provide healthy surroundings for family life; and that the growth of the community be commensurate with and promotive of the efficient and economical use of public funds.

In accomplishing this objective, it is the intent of this legislation that the planning board shall serve in an advisory capacity to presently established boards and officials.

Before a county planning board may be created, the board of county commissioners shall, by resolution, give public notice of their intent to create such planning board and of a public hearing thereon, by publication of notice of time and place of hearing on such resolution in each newspaper published in the county not less than fifteen (15) nor more than thirty (30) days prior to the date of hearing. A resolution creating a county planning board shall not be adopted by the board of county commissioners if disapproved in writing, not later than sixty (60) days after such hearing, by a majority of the qualified electors of the county residing outside the limits of the jurisdictional area of an existing city-county planning board established pursuant to section 11-3830 and outside the incorporated limits of each city and town in the county.

History: En. Sec. 1, Ch. 246, L. 1957; amd. Sec. 1, Ch. 247, L. 1963; amd. Sec. 2, Ch. 273, L. 1971.

#### Amendments

The 1971 amendment substituted that portion of the first sentence of the first

paragraph preceding "may create" for "The governing body of any city or the governing bodies of any two or more cities and the county in which such city or cities are located jointly"; and added the third paragraph.

#### 11-3803. Definitions. As used in this act:

1 to 12. \* \* \* [Same as parent volume.]

History: En. Sec. 3, Ch. 246, L. 1957; amd. Sec. 2, Ch. 247, L. 1963; amd. Sec. 1, Ch. 349, L. 1973.

#### Amendments

The 1973 amendment made no change in this section.

**11-3810. County planning boards and city-county planning boards—members—term of officer members and citizen members.** 1. A city-county planning board shall consist of not less than nine (9) members to be appointed as follows:

a. Two (2) official members who reside outside the city limits to be appointed by the board of county commissioners who may in the discretion of the board of county commissioners be employed by or hold public office in the county.

b. and c. \* \* \* [Same as parent volume.]

d. Two (2) citizen members to be appointed by the board of county commissioners. The two (2) members shall reside outside the city limits but within the jurisdictional area of the planning board.

e. \* \* \* [Same as parent volume.]

2. County planning boards shall consist of not less than five (5) members appointed by the board of county commissioners. At least one (1) member of any county planning board existing at or formed after July 1, 1973, shall be a member of the governing board of a conservation district as provided for in section 76-105 or a state co-operative grazing district, if officers of either reside in said county.

In the event that any city or town subsequently becomes represented on the county planning board pursuant to section 11-3815, additional members of the planning board representing such cities or towns shall be appointed by the respective city councils.

3. The terms of the members who are officers of any governmental unit represented on the board shall be coextensive with their respective terms of office to which they have been elected or appointed; the terms of the other members shall be two (2) years, except that the terms of the first members appointed shall be fixed by agreement and rule of the governing bodies represented on the board for one (1) or two (2) years in order that a minimum number of terms shall expire in any year.

History: En. Sec. 10, Ch. 246, L. 1957; amd. Sec. 4, Ch. 247, L. 1963; amd. Sec. 1, Ch. 189, L. 1965; amd. Sec. 3, Ch. 273, L. 1971; amd. Sec. 2, Ch. 349, L. 1973.

tion 2; and redesignated former subsection 2 as subsection 3.

The 1973 amendment inserted "who reside outside the city limits" in subdivision 1a; and added the second sentence to the first paragraph in subsection 2.

#### Amendments

The 1971 amendment inserted subsec-

**11-3811. Vacancies.** Vacancies occurring on the board of official members, and by death or resignation of citizen members, shall be filled by the governing bodies having appointed them for the unexpired term.

Vacancies occurring in citizen members on the city-county planning board at the end of a term shall be filled alternately by the mayor and the board of county commissioners represented on the board, commencing with the mayor. Vacancies occurring in citizen members on the county planning board at the end of a term shall be filled by the board of county commissioners. In the event more than one (1) city is represented on a board the representation and appointments to be made by the respective cities and counties shall be by agreement and rule of the board.

**History:** En. Sec. 11, Ch. 246, L. 1957; amd. Sec. 4, Ch. 273, L. 1971. ty planning" in the first sentence of the second paragraph; and inserted the second sentence of the second paragraph.

#### **Amendments**

The 1971 amendment inserted "city-coun-

**11-3812. Citizen members of county planning board and city-county planning board—Qualifications.** The citizen members of the county planning board shall be resident freeholders in the area over which the planning board has jurisdiction. The citizen members of the city-county planning board shall be resident freeholders in the area over which the planning board has jurisdiction, provided, however, that at least two (2) of such members shall be resident freeholders in the area, if any, outside the city limits over which the planning board has jurisdiction.

**History:** En. Sec. 12, Ch. 246, L. 1957; amd. Sec. 2, Ch. 271, L. 1959; amd. Sec. 5, Ch. 273, L. 1971.

#### **Amendments**

The 1971 amendment inserted the first sentence.

**11-3815. Representation of additional cities, towns, or county on existing boards.** Any city, county, or town, or any combination thereof wishing to be represented upon an existing planning board, may by agreement of the governing body or bodies then represented upon the board, obtain representation thereon and share in the membership duties and costs of the board upon a basis agreeable to the governing body or bodies creating the board.

The membership as well as the jurisdictional area of any board may be increased to provide for representation and planning of any additional cities, counties, or towns seeking representation.

Any city, county, or town which becomes represented upon an existing planning board pursuant to this section may appropriate funds for expenses necessary to cover the costs of such representation. The governing bodies of any city or county so being represented may levy on all property which is added to the jurisdictional area of an existing board by such representation a tax for planning board purposes under procedures set forth in Title 16, chapter 19, R.C.M. 1947, or Title 11, chapter 14, R.C.M. 1947, whichever is applicable; provided such tax shall not exceed the maximum levy authorized in section 11-3825, R. C. M. 1947.

**History:** En. Sec. 15, Ch. 246, L. 1957; amd. Sec. 6, Ch. 273, L. 1971.

#### **Amendments**

The 1971 amendment inserted "as well

as the jurisdictional area" and "and planning" in the second paragraph; added the third paragraph; and made a minor change in phraseology.

**11-3815.1. Joint or consolidated planning boards.** (1) Any existing county, city-county, or city planning board may form a joint or consoli-



dated planning board with any other existing county, city-county, or city planning board or with any combination of these boards.

(2) The manner of combination shall be by interlocal agreement of the cities, counties and towns represented on the existing planning boards pursuant to Title 16, chapter 49, R. C. M. 1947.

(3) The interlocal agreement shall:

(a) state the name of the combined board;

(b) specify whether a joint or combined board is formed;

(c) specify the representation, means and manner of appointment, membership duties and manner of sharing costs of the combined board which may be on any basis agreeable to the governing bodies of the cities, counties, and towns represented on the existing planning boards.

(4) If a consolidated board is formed, the existing county, city-county, and city planning boards shall be dissolved, and the consolidated boards shall have all of the rights, duties, powers, and obligations of the existing planning boards.

(5) If a joint board is formed, the existing planning board shall not be dissolved and the joint board shall have such rights, duties, powers, and obligations as are set forth in the interlocal agreement.

History: En. 11-3815.1 by Sec. 1, Ch. 101, L. 1975.

#### Title of Act

An act to permit existing county, city-county, or city planning boards to form joint or consolidated planning boards by interlocal agreement.

**11-3819. Members not to receive salary.** The members of planning boards shall receive no salary for serving on the planning board, but may be reimbursed from local funds for transportation and actual expenses up to but not exceeding state transportation reimbursements and allowable expenses incurred in attending planning board meetings.

History: En. Sec. 19, Ch. 246, L. 1957; amended. Sec. 1, Ch. 291, L. 1974.

reimbursed \* \* \* planning board meetings"; and made minor changes in phraseology.

#### Amendments

The 1974 amendment added "but may be

**11-3825. Funds for operation—tax levy authority.** 1. After a city council has by ordinance, a board of county commissioners has, by ordinance and resolution, or a city council and board of county commissioners have, by ordinance and resolution, created a planning board, the governing bodies represented upon such board may appropriate funds to carry out the duties of the planning board.

2. \* \* \* [Same as parent volume.]

3. The governing body of any city or town represented upon a planning board may levy a tax upon the property located within such city or town not to exceed two (2) mills for planning board purposes, under procedures set forth in Title 11, chapter 14, R.C.M. 1947, provided such tax shall not exceed the maximum levy authorized in section 11-3825, paragraph 6, R.C.M. 1947.

4. When a city-county planning board has been established, the board of county commissioners may create a planning district which shall include that property within the jurisdictional areas as established pursuant to

section 11-3830, which lies outside the limits of any incorporated cities and towns; and the board of county commissioners may levy on all property located within such planning district a tax for planning board purposes, under procedures set forth in Title 16, chapter 19, R.C.M. 1947, provided such tax shall not exceed the maximum levy authorized in section 11-3825, paragraph 6, R.C.M. 1947.

5. When a county planning board has been established, the board of county commissioners may create a planning district which shall include that property which lies outside the limits of the jurisdictional area as established pursuant to section 11-3830 or as modified pursuant to section 11-3830.2 in counties where a city-county planning board has been established as well as that property which lies outside the limits of any incorporated cities and towns; and the board of county commissioners may levy on all property located within such planning district a tax not to exceed two (2) mills for planning board purposes under procedures set forth in Title 16, chapter 19, R.C.M. 1947.

6. The tax levy for planning board purposes shall be limited as follows: a city of the first class, as defined in section 11-201 of this code, may levy a tax not to exceed two (2) mills; a city of the second class may levy a tax not to exceed four (4) mills; a city of the third class may levy a tax not to exceed six (6) mills and a town may levy a tax not to exceed six (6) mills.

A county of the first class, as defined in section 16-2419 of this code, may levy a tax not to exceed two (2) mills; a county of the second class may levy a tax not to exceed three (3) mills; a county of the third class may levy a tax not to exceed four (4) mills; a county of the fourth class may levy a tax not to exceed five (5) mills and counties of the fifth, sixth and seventh classes may levy a tax not to exceed six (6) mills.

History: En. Sec. 25, Ch. 246, L. 1957; increased the maximum levy from one amd. Sec. 9, Ch. 247, L. 1963; amd. Sec. to two mills and added the proviso in 7, Ch. 273, L. 1971. subsection 3; deleted "not to exceed one (1) mill" after "a tax" and added the proviso in subsection 4; added subsections 5 and 6; and made a minor change in phraseology.

#### Amendments

The 1971 amendment inserted "a board of county commissioners has, by ordinance and resolution" in subsection 1;

**11-3830. Jurisdictional area.** 1. The governing bodies represented on a city-county planning board shall by separate resolution establish the jurisdictional area of the planning board. The jurisdictional area shall include the area within the incorporated limits of the city and such contiguous unincorporated area outside the city as, in the judgment of the respective governing bodies, bears reasonable relation to the development of the area involved.

The boundaries of the jurisdictional area can be extended further than four and one-half miles from the limits of the cities only upon petition signed by five per cent (5%) or more of the resident freeholders living in excess of four and one-half miles and not more than twelve miles from the limits of the cities and within the area desiring to be included within said jurisdictional limits, and upon presentation of said petition to the board of county commissioners. Thereafter, the board of county commissioners must, by resolution, set the proposed boundaries of said area



and give notice of their intent to add said area to the jurisdictional limits theretofore created and of receipt of said petition, by publication of notice of time and place of hearing on said petition and resolution, said notice to be published in a newspaper published in the county not less than ten (10) nor more than twenty (20) days prior to the date of said hearing. Thereafter, the said boundaries of said area can only be set upon good cause being shown for the establishment of said extended jurisdictional area and the boundaries thereof, provided that such resolution shall not be adopted by the board of county commissioners, if disapproved in writing, by a majority of the freeholders of the territory proposed to be embraced. The jurisdictional area shall not extend more than twelve (12) miles beyond the limits of any city within the jurisdictional area.

2 and 3. \* \* \* [Same as parent volume.]

History: En. Sec. 30, Ch. 246, L. 1957; amd. Sec. 3, Ch. 271, L. 1959; amd. Sec. 11, Ch. 247, L. 1963; amd. Sec. 1, Ch. 136, L. 1969.

#### Amendments

The 1969 amendment substituted "area

involved" for "city" at the end of the first sentence; inserted the first three sentences of the second paragraph, and in the fourth sentence, formerly the second sentence of the first paragraph, substituted "twelve miles" for "four and one-half (4½) miles."

**11-3830.2. Jurisdictional area — county planning board.** (1) The board of county commissioners shall by resolution establish the jurisdictional area of the county planning board. The jurisdictional area shall include the area which is both outside the incorporated limits of any city in the county as well as outside the jurisdictional area of an existing city-county planning board established pursuant to section 11-3830. Should any city or town become represented on the county planning board pursuant to section 11-3815, the jurisdictional area of the county planning board shall be extended to include those cities or towns.

(2) The planning board, after the approval of the jurisdictional area by the board of county commissioners, shall file in the office of the clerk and recorder a map showing the boundaries of the jurisdictional area. The boundaries may be revised from time to time by resolution of the board of county commissioners. Such revised boundaries shall be shown upon a map which shall be filed as provided in this section. The area included in such map shall constitute the area over which the planning board shall have advisory jurisdiction.

(3) In case an unincorporated area is within the potential jurisdiction of more than one planning board, then the boundary between the conflicting areas shall be determined by agreement between the planning boards involved, with the approval of their respective governing bodies. Any map showing the boundary line so agreed upon and approved shall be filed as provided in this section and thereafter shall fix the limit of territorial jurisdiction with respect to planning boards.

(4) In case the jurisdictional area of a city-county planning board, which is established subsequent to the establishment of a county planning board, is potentially within the jurisdiction of the county planning board, then the property outside any incorporated city between the conflicting areas shall be determined by agreement between the planning boards involved with the approval of the respective governing bodies and a map



showing the boundary lines so agreed upon shall be filed as provided in this section and thereafter shall fix the limits of the territorial jurisdiction of the respective planning boards.

**History:** En. 11-3830.2 by Sec. 8, Ch. 273, L. 1971.

#### **Title of Act**

An act providing for building restrictions and zoning and subdivision regulations by cities, towns and counties; providing for boards of adjustment and the duties thereof; providing for city, county and city-county planning boards; providing definitions; providing qualifications

for members of boards; providing for a master plan and a jurisdictional area; providing for plats of subdivisions; providing for planning and zoning districts; amending sections 11-2702, 11-3801, 11-3810, 11-3811, 11-3812, 11-3815, 11-3825, 11-3842, 11-3843, 11-3844, 11-3846, 11-3847, 11-3848, 11-3851, R. C. M. 1947, and adding new section 11-3830.2, and amending sections 16-4101, 16-4702, 16-4703, 16-4705, R. C. M. 1947.

**11-3831. Master plan—contents.** The planning board shall prepare and propose a master plan for the jurisdictional area, which plan may include;

1. to 4. \* \* \* [Same as parent volume.]

5. Recommendations setting forth the development, improvement, and extension of areas, if any, to be set aside for use as trailer courts and sites for mobile homes.

**History:** En. Sec. 31, Ch. 246, L. 1957; amd. Sec. 12, Ch. 247, L. 1963; amd. Sec. 1, Ch. 156, L. 1973.

#### **Amendments**

The 1973 amendment added subdivision 5.

**11-3842. Plats of subdivisions—approval by planning board.** (1) Where a master plan has been approved, the city council may by ordinance or the board of county commissioners may by resolution require subdivision plats to conform to the provisions of the master plan. Certified copies of such ordinance shall be filed with the city or town clerk and with the county clerk and recorder of the county.

(2) Thereafter a plat involving lands within the corporate limits of the city and covered by said master plan shall not be filed without first presenting it to the planning board which shall make a report to the city council advising as to compliance or noncompliance of the plat with the master plan. The city council shall have the final authority to approve the filing of such plat.

(3) Thereafter a plat involving lands outside the corporate limits of the city and covered by said master plan shall not be filed without first presenting it to the planning board which shall make a report to the board of county commissioners advising as to compliance or noncompliance of the plat with the master plan. The board of county commissioners shall have the final authority to approve the filing of such plat.

(4) Nothing herein contained shall be interpreted to limit the present powers of the city or county governments, but shall be an additional requirement before any plat may be filed of record or entitled to be recorded.

**History:** En. Sec. 42, Ch. 246, L. 1957; amd. Sec. 4, Ch. 271, L. 1959; amd. Sec. 16, Ch. 247, L. 1963; amd. Sec. 9, Ch. 273, L. 1971.

board of county commissioners may by resolution" in the first sentence of subsection (1); inserted subsection (3); redesignated former subsection (3) as subsection (4); and made minor changes in style.

#### **Amendments**

The 1971 amendment inserted "or the

**11-3842.1. Advice of planning board required.** The governing body of any city, town or county which has formed a planning board and adopted a comprehensive plan and subdivision regulations pursuant to Title 11, chapter 38, R.C.M., 1947, shall seek the advice of the appropriate planning board in all matters pertaining to the approval or disapproval of plats or subdivisions.

**History:** En. Sec. 2, Ch. 19, L. 1971.

**11-3843 to 11-3848. Repealed.**

**Repeal**

Sections 11-3843 to 11-3848 (Secs. 43 to 48, Ch. 246, L. 1957; Secs. 17 to 22, Ch. 247, L. 1963; Secs. 10 to 14, Ch. 273, L.

1971), relating to approval, disapproval and recording of city plats, were repealed by Sec. 20, Ch. 500, Laws 1973. For new law see secs. 11-3859 to 11-3876.

**11-3851. Repealed.**

**Repeal**

Section 11-3851 (Sec. 51, Ch. 246, L. 1957; Sec. 23, Ch. 247, L. 1963; Sec. 15, Ch. 273, L. 1971), relating to appeals

from the rejection of subdivision plats, was repealed by Sec. 20, Ch. 500, Laws 1973. For new law see secs. 11-3859 to 11-3876.

**11-3859. Citation of subdivision act.** This act may be cited as the "Montana Subdivision and Platting Act."

**History:** En. Sec. 1, Ch. 500, L. 1973.

**Title of Act**

An act requiring local governing bodies to adopt subdivision regulations and in default thereof providing for the promulgation of departmental minimum requirements; providing for the submission of environmental assessments; providing for the administrative establishment of

procedures and requirements for preparation of subdivision plats; setting forth requirements for surveying and platting divisions of real property and for recording surveys and plats; providing for surveying, platting, and subdividing generally; and repealing sections 11-601 through 11-616, 11-3843 through 11-3848 and 11-3851, R. C. M. 1947.

**11-3860. Statement of purpose.** It is the purpose of this act to promote the public health, safety, and general welfare by regulating the subdivision of land; to prevent overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements; to require development in harmony with the natural environment; to require that whenever necessary, the appropriate approval of subdivisions be contingent upon a written finding of public interest by the governing body; and to require uniform monumentation of land subdivisions and transferring interests in real property by reference to plat or certificate of survey.

**History:** En. Sec. 2, Ch. 500, L. 1973; amd. Sec. 1, Ch. 498, L. 1975; amd. Sec. 1, Ch. 552, L. 1977.

**Amendments**

The 1975 amendment substituted "require development" for "encourage devel-

opment"; and inserted the requirement that subdivision approval be contingent upon a written finding of public interest.

The 1977 amendment substituted "whenever necessary, the appropriate approval of subdivisions" for "approval of any subdivision."

**11-3861. Definitions.** As used in this act, unless the context or subject matter clearly requires otherwise, the following words or phrases shall have the following meanings:

(1) "Certificate of survey" means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.

(2) "Dedication" means the deliberate appropriation of land by an owner for any general and public use, reserving to himself no rights which are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted.

(2.1) "Division of land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring, or contracting to transfer, title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this act. Provided that where required by this act the land upon which an improvement is situated has been subdivided in compliance with this act, the sale, rent, lease or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land and is not subject to the terms of this act.

(3) "Examining land surveyor" means a registered land surveyor duly appointed by the governing body to review surveys and plats submitted for filing.

(4) "Governing body" means a board of county commissioners or the governing authority of any city or town organized pursuant to law.

(4.1) "Irregularly shaped tract of land" means a parcel of land other than an aliquot part of the United States government survey section or a United States government lot the boundaries or areas of which cannot be determined without a survey or trigonometric calculation.

(5) "Planned unit development" means a land development project consisting of residential clusters, industrial parks, shopping centers, or office building parks, or any combination thereof which comprises a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use.

(6) "Plat" means a graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, and alleys, and other divisions and dedications.

(7) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision which furnish a basis for review by a governing body.

(8) "Final plat" means the final drawing of the subdivision and dedication required by this act to be prepared for filing for record with the county clerk and recorder and containing all elements and requirements set forth in this act and in regulations adopted pursuant thereto.

(9) "Registered land surveyor" means a person licensed in conformance with the Montana Professional Engineers' Registration Act (sections 66-2301 through 66-2347) to practice surveying in the state of Montana.

(10) "Registered professional engineer" means a person licensed in conformance with the Montana Professional Engineers' Registration Act



(sections 66-2301 through 66-2347) to practice engineering in the state of Montana.

(11) "Subdivider" means any person who causes land to be subdivided or who proposes a subdivision of land.

(12) "Subdivision" means a division of land, or land so divided, which creates one or more parcels, containing less than twenty (20) acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed, and shall include any resubdivision; and shall further include any condominium or area, regardless of its size, which provides or will provide multiple space for recreational camping vehicles, or mobile homes. A subdivision shall comprise only those parcels less than twenty (20) acres which have been segregated from the original tract, and the plat thereof shall show all such parcels whether contiguous or not. Provided, however, condominiums constructed on land divided in compliance with this chapter are exempt from the provisions of this chapter.

(13) "Occasional sale" means one sale of a division of land within any twelve (12) month period.

**History:** En. Sec. 3, Ch. 500, L. 1973; amd. Sec. 1, Ch. 334, L. 1974; amd. Sec. 2, Ch. 498, L. 1975.

#### Compiler's Notes

Of the sections referred to above in subdivisions (9) and (10), sections 66-2326, 66-2336, 66-2338, 66-2339, 66-2342, 66-2343, 66-2345, and 66-2347 were repealed by Sec. 18, Ch. 366, Laws of 1975; and sections 66-2324, 66-2329, 66-2331 to 66-2335, 66-2337, 66-2340, 66-2341, 66-2344, and 66-2346 have been redesignated as sections 66-2349, 66-2351 to 66-2356, 66-2358, 66-2361, 66-2362, 66-2364 and 66-2366.

#### Amendments

The 1974 amendment inserted subdivision (2.1) "Division of land"; deleted "a county surveyor or" in subdivision (3) after "means"; inserted "by the governing body" in subdivision (3); inserted subdivision (4.1); added "or use" at the end of subdivision (5); deleted "and the same shall be accompanied by any proposed covenants to run with the platted land and other elements of the proposed subdivision required to furnish a basis of review by the governing body" at the end of subdivision (7); inserted "required by this act to be" after "dedication" in subdivision (8); inserted "Registration" before "Act" in subdivision (10); substituted present subdivision (12) for one reading "Subdivision means the division of land, or land so divided, into two (2) or more parcels, whether contiguous or not, any of which is ten (10) acres or less, exclusive of public roadways, in size, without regard to the method of description thereof, in order that the title or possession of the parcels or any interest therein may be sold,

rented, leased, or otherwise conveyed either immediately or in the future, and shall include any resubdivision of land; and shall further include any condominium or areas providing multiple space for camping trailers, house trailers or mobile homes; provided further that a division of land is a subdivision when the division creates a second or any subsequent parcel for the purpose of sale, rent, lease, or other conveyance from a tract of land held in single or undivided ownership on July 1, 1973, where any of the parcels segregated from the original tract is ten (10) acres or less, exclusive of public roadways, in size, without regard to the method of description thereof. The plat of a subdivision so created shall show all of the parcels segregated from the original tract whether contiguous or not.

"Subdivision" shall include any condominium or areas providing multiple space for camping trailers, house trailers, or mobile homes, regardless of the size of the parcel of land upon which the same is situated"; and added subdivision (13).

The 1975 amendment made a minor change in punctuation.

#### Certificate of Survey Distinguished from Plat

A document entitled "A Certificate of Survey . . .," which established boundaries and property description for deed on entire single parcel and did not contain representations of a subdivision of the parcel or otherwise conform to requirements of "plat" set forth in section 11-3861(6), was a "certificate of survey." State ex rel. Swart v. Stucky, — M —, 536 P 2d 762.

**11-3862. Surveys required—exceptions—standards for monumentation.**

(1) All divisions of land for sale other than a subdivision after the effective date of this act into parcels which cannot be described as 1/32 or larger aliquot parts of a United States government section or a United States government lot must be surveyed by or under the supervision of a registered land surveyor.

(2) Every subdivision of land after June 30, 1973, shall be surveyed and platted in conformance with this act by or under the supervision of a registered land surveyor. Subdivision plats shall be prepared and filed in accordance with this act and regulations adopted pursuant thereto. All division of sections into aliquot parts and retracement of lines must conform to United States bureau of land management instructions, and all public land survey corners shall be filed in accordance with the Corner Recordation Act of Montana (sections 67-2001 through 67-2019). Engineering plans, specifications, and reports required in connection with public improvements and other elements of the subdivision required by the governing body shall be prepared and filed by a registered engineer or a registered land surveyor as their respective licensing laws allow in accordance with this act and regulations adopted pursuant thereto.

(3) The county clerk and recorder of any county shall not record any instrument which purports to transfer title to or possession of a parcel or tract of land which is required to be surveyed by this act unless the required certificate of survey or subdivision plat has been filed with the clerk and recorder and the instrument of transfer describes the parcel or tract by reference to the filed certificate or plat.

(4) Instruments of transfer of land which is acquired for state highways may refer by parcel and project number to state highway plans which have been recorded in compliance with section 32-2413, and are exempted from the surveying and platting requirements of this act; provided, however, that if such parcels are not shown on highway plans of record, instruments of transfer of such parcels shall be accompanied by and refer to appropriate certificates of survey and plats when presented for recording.

(5) The provisions of this act shall not apply to the division of state-owned land unless the division creates a second or subsequent parcel from a single tract for sale, rent or lease for residential purposes after July 1, 1974.

(6) Unless the method of disposition is adopted for the purpose of evading this act, the following divisions of land are not subdivisions under this act but are subject to the surveying requirements of this section for divisions of land not amounting to subdivisions.

Within a platted subdivision filed with the county clerk and recorder any division of lots which results in an increase in the number of lots, or which redesigns or rearranges six or more lots, must be reviewed and approved by the governing body and an amended plat must be filed with the county clerk and recorder. For five or fewer lots within a platted subdivision, relocation of common boundaries and the aggregation of lots are exempted from review as subdivisions. Exempted from local review outside of platted subdivisions are:



(a) Divisions made for the purpose of relocating common boundary lines between adjoining properties.

(b) Divisions made for the purpose of a gift or sale to any member of the landowner's immediate family.

(c) Divisions made by sale or agreement to buy and sell where the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes. Any change in use of the land for anything other than agricultural purposes subjects the division to the provisions of this chapter.

(d) A single division of a parcel when the transaction is an occasional sale.

(7) Subdivisions created by rent or lease are exempt from the surveying and filing requirements of this act but must be submitted for review and approved by the governing body before portions thereof may be rented or leased.

(8) Subdivisions totally within a master planning area adopted pursuant to 11-3801 through 11-3856 wherein zoning regulations pursuant to 11-2701 through 11-2709 or 16-4701 and a long-range development program of public works' projects pursuant to 11-3831 have been adopted are deemed to be in the public interest and exempt from the requirement of an environmental assessment.

(9) Unless the method of disposition is adopted for the purpose of evading this act, the requirements of this act shall not apply to any division of land:

(a) which is created by order of any court of record in this state or by operation of law, or which, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain (sections 93-9901 through 93-9926);

(b) which is created to provide security for construction mortgages, liens, or trust indentures;

(c) which creates an interest in oil, gas, minerals, or water which is now or hereafter severed from the surface ownership of real property;

(d) which creates cemetery lots;

(e) which is created by the reservation of a life estate;

(f) which is created by lease or rental for farming and agricultural purposes.

(10) The sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land, as that term is defined in this act, and is not subject to the requirements of this act.

(11) The department of community affairs shall, in conformance with the Montana Administrative Procedure Act (sections 82-4201 through 82-4225), prescribe uniform standards for monumentation and for the form, accuracy, and descriptive content of records of survey.

(12) It shall be the responsibility of the governing body to require the replacement of all monuments removed in the course of construction.



History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977.

#### Amendments

The 1974 amendment substituted present subsection (1) for one reading "Except as provided herein, all division of real property made after June 30, 1973, into lots, tracts, or parcels any of which is ten (10) acres or less in size or the boundaries or area of which cannot be determined without a survey or trigonometric calculation, must be surveyed by or under the supervision of a registered surveyor; and a certificate of survey thereof must be completed by the surveyor and filed by him in the office of the county clerk and recorder of the county in which the real property lies"; deleted from subsection (2) a former third sentence reading "Each subdivision

plat must be accompanied by as complete a survey of the section or sections in which the subdivision is located as may be necessary to properly orient the subdivision within such section or sections"; inserted present subsections (3), (5), (6), (7) and (9); redesignated former subsections (3), (4), (5) and (6) as subsections (4), (8), (10) and (11), respectively; and made a minor change in phraseology.

The 1975 amendment substituted "department of community affairs" for "department of intergovernmental relations" in subsection (10).

The 1977 amendment inserted the second paragraph of subsection (6), before the lettered subdivisions; inserted subsection (8); redesignated former subsections (8) through (11) as subsections (9) through (12); and substituted subdivision (9)(b) for "which is created by a lien, mortgage, or trust indenture."

**11-3863. Enforcement by governmental subdivisions—adoption of regulations—public hearing.** (1) The governing body of every county, city, and town shall, before July 1, 1974, adopt and provide for the enforcement and administration of subdivision regulations reasonably providing for the orderly development of their jurisdictional areas; for the co-ordination of roads within subdivided land with other roads, both existing and planned; for the dedication of land for roadways and for public utility easements; for the improvement of roads; for the provision of adequate open spaces for travel, light, air and recreation; for the provision of adequate transportation, water, drainage, and sanitary facilities; for the avoidance or minimization of congestion; and for the avoidance of subdivision which would involve unnecessary environmental degradation; and the avoidance of danger of injury to health, safety, or welfare by reason of natural hazard or the lack of water, drainage, access, transportation or other public services or would necessitate an excessive expenditure of public funds for the supply of such services.

Prior to adopting or amending subdivision regulations pursuant to this act, the governing body shall submit the proposed regulations or amendments to the division of planning and economic development of the department of community affairs for review.

Before the governing body adopts subdivision regulations pursuant to this section it shall hold a public hearing thereon and shall give public notice of its intent to adopt such regulations and of the public hearing by publication of notice of the time and place of the hearing in a newspaper of general circulation in the county not less than fifteen (15) nor more than thirty (30) days prior to the date of the hearing.

(2) Not later than December 31, 1973, the department of community affairs, through its division of planning, shall, in conformance with the Montana Administrative Procedure Act (sections 82-4201 through 82-4225), prescribe reasonable minimum requirements for subdivision regulations adopted pursuant to this act. The minimum requirements shall include

detailed criteria for the content of the environmental assessment required by this act. The department shall provide for the review of preliminary plats by those agencies of state and local government and affected public utilities having a substantial interest in a proposed subdivision; provided, however, that such agency or utility review shall not delay the governing body's action on the plat beyond the time limit specified herein, and the failure of any agency to complete a review of a plat shall not be a basis for rejection of the plat by the governing body.

(3) In prescribing the minimum contents of the subdivision regulations, the department of community affairs, through its division of planning, shall require the submission by the subdivider to the governing body of an environmental assessment.

(3.1) When a subdivision is proposed in an area for which a master plan has been adopted pursuant to sections 11-3801 through 11-3856 and the proposed subdivision will be in compliance with the plan or when the subdivision will contain fewer than ten (10) parcels and less than twenty (20) acres, a planning board established pursuant to sections 11-3801 through 11-3856 and having jurisdiction over the area involved may exempt the subdivider from the completion of all or any portion of the environmental assessment. When such an exemption is granted, the planning board shall prepare and certify a written statement of the reasons for granting the exemption. A copy of this statement shall accompany the preliminary plat of the subdivision when it is submitted for review. Where no properly established planning board having jurisdiction exists, the governing body may grant exemptions as specified in this paragraph.

(4) Where required the environmental assessment shall accompany the preliminary plat and shall include:

(a) a description of every body or stream of surface water as may be affected by the proposed subdivision, together with available ground water information, and a description of the topography, vegetation and wildlife use within the area of the proposed subdivision;

(b) maps and tables showing soil types in the several parts of the proposed subdivision, and their suitability for any proposed developments in those several parts;

(c) a community impact report containing a statement of anticipated needs of the proposed subdivision for local services, including education and busing, roads and maintenance, water, sewage, and solid waste facilities, and fire and police protection;

(d) such additional relevant and reasonable information as may be required by the department through its division of planning.

(5) Local subdivision regulations shall include procedures for the summary review and approval of subdivision plats containing five (5) or fewer parcels where proper access to all lots is provided, where no land in the subdivision will be dedicated to public use for parks or playgrounds and which have been approved by the department of health and environmental sciences where such approval is required by sections 69-5001 through 69-5005; provided that reasonable local regulations may contain additional requirements for summary approval.



(6) Subdivision regulations may authorize the governing body to grant variances from the regulations when strict compliance will result in undue hardship and when it is not essential to the public welfare. Any variance granted pursuant to this subsection must be based on specific variance criteria contained in the subdivision regulations.

(7) Local regulations may provide that in lieu of the completion of the construction of any public improvements prior to the approval of a final plat, the governing body shall require a bond or other reasonable security, in an amount and with surety and conditions satisfactory to it, providing for and securing the construction and installation of such improvements within a period specified by the governing body and expressed in the bonds or other security.

(8) In the event that any governing body has not adopted subdivision regulations by July 1, 1974, which meet or exceed the prescribed minimum requirements, the department shall, through its division of planning, no later than January 1, 1975, promulgate reasonable regulations to be enforced by the governing body. If at any time thereafter the governing body adopts its own subdivision regulations, these shall supersede those promulgated by the department but shall be no less stringent.

**History:** En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975.

#### **Amendments**

The 1974 amendment substituted "a newspaper of general circulation" in the third paragraph of subsection (1) for "each newspaper published"; substituted "division of planning" throughout the section for "division of planning and economic development"; deleted "model subdivision rules and" in the first sentence of subsection (2) after "prescribe"; inserted "for" and deleted "designed to promote the public health, safety and general welfare to be contained in, and those subject areas which must be addressed by" in the first sentence of subsection (2) before

"subdivision regulations"; deleted "subdivision rules and" after "The" at the beginning of the second sentence in subsection (2); substituted "department" for "governing body" at the beginning of the third sentence in subsection (2); inserted subsection (3.1); inserted "where required" at the beginning of subsection (4); substituted "where proper access to all lots is provided" in subsection (5) for "all of which front on an existing public road"; inserted "for parks and playgrounds" in subsection (5); and made a minor change in phraseology.

The 1975 amendment substituted "department of community affairs" for "department of intergovernmental relations" in subsections (1) to (3).

**11-3864. Dedications of portions of subdivisions to the public—cash donations in lieu of dedications—waivers.** (1) A plat of a residential subdivision shall show that one-ninth (1/9) of the combined area of lots five (5) acres or less in size and one-twelfth (1/12) of the combined area of lots greater than five (5) acres in size, exclusive of all other dedications, is forever dedicated to the public for parks or playgrounds. No dedication may be required for the combined area of those lots in the subdivision which are larger than ten (10) acres exclusive of all other dedications. The governing body, in consultation with the planning board having jurisdiction, may determine suitable locations for such parks and playgrounds.

(2) Where, because of size, topography, shape, location, or other circumstances, the dedication of land for parks or playgrounds is undesirable, the governing body may, for good cause shown, make an order to be en-



dorsed and certified on the plat accepting a cash donation in lieu of the dedication of land and equal to the fair market value of the amount of land that would have been dedicated. For the purpose of this section, the fair market value is the value of the unsubdivided, unimproved land. Such cash donation shall be paid into the park fund to be used for the purchase of additional lands or for the initial development of parks and playgrounds.

(3) If the proposed plat provides for a planned unit development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside therein, the governing body may issue an order waiving land dedication and cash donation requirements.

(4) If a tract of land is being developed under single ownership as a part of an overall plan, and part of the tract has been subdivided and sufficient park lands have been dedicated to the public from the area that has been subdivided to meet the requirements of this section for the entire tract being developed, the governing body shall issue an order waiving the land dedication and cash donation requirements for the subsequently platted area.

(5) The local governing body may waive dedication and cash donation requirements where all of the parcels in a subdivision are five (5) acres or more in size and where the subdivider enters a covenant to run with the land and revocable only by mutual consent of the governing body and the property owner that the parcels in the subdivision will never be subdivided into parcels of less than five (5) acres and that all parcels in the subdivision will be used for single family dwellings.

(6) The governing body may waive dedication and cash donation requirements when the subdivider agrees to create a property owners' association for the proposed subdivision and to deed to the association land to be held in perpetuity for use as parks or playgrounds. The area of land to be deeded to the association shall equal the amount that would otherwise have been dedicated to public use.

(7) The governing body may waive dedication and cash donation requirements for subdivision to be created by rent or lease where the subdivider agrees to develop parks or playgrounds within the subdivision for the common use of the residents of the subdivision. The area of land to be reserved for this purpose shall equal the amount that would otherwise have been dedicated to the public.

History: En. Sec. 6, Ch. 500, L. 1973; amd. Sec. 4, Ch. 334, L. 1974.

#### Amendments

The 1974 amendment substituted "mu-

tual consent of the governing body and the property owner" in subsection (5) for "consent of the governing body"; added subsections (6) and (7); and made numerous changes in phraseology.

**11-3865. Required abstract or title insurance—certification by city or county attorney.** (1) The subdivider shall submit with the final plat a certificate of a licensed title abstracter showing the names of the owners of record of the land to be subdivided and the names of lien holders or claimants of record against the land and the written consent to the subdivision by the owners of the land, if other than the subdivider, and any lien holders or claimants of record against the land.

(2) The governing body may provide for the review of the abstract or certificate of title of the land in question by the county attorney where the land lies in an unincorporated area or by the city or town attorney when the land lies within the limits of a city or town.

History: En. Sec. 7, Ch. 500, L. 1973;  
amd. Sec. 5, Ch. 334, L. 1974.

#### Amendments

The 1974 amendment deleted "Where a subdivision platted under this act contains land to be dedicated to public use" from the beginning of subsection (1); substituted "final plat" for "preliminary

plat" at the beginning of subsection (1); substituted "subdivided" for "dedicated" in two places in subsection (1); substituted present subsection (2) for one reading "title insurance guaranteeing the public's interest in the dedicated land in a reasonable amount to be determined by the governing body"; and made minor changes in style, punctuation and phraseology.

**11-3866. Submission of subdivision plat to governing body—notice—hearing—approval—disapproval.** (1) Except where a plat is eligible for summary approval the subdivider shall present to the governing body, or the agent or agency designated thereby, the preliminary plat of the proposed subdivision for local review. When the proposed subdivision lies within the boundaries of an incorporated city or town, the preliminary plat shall be submitted to and approved by the city or town governing body. When the proposed subdivision is situated entirely in an unincorporated area the preliminary plat shall be submitted to and approved by the governing body of the county; however, if the proposed subdivision lies within one (1) mile of a third class city or town or within two (2) miles of a second class city or within three (3) miles of a first class city the county governing body shall submit the preliminary plat to the city or town governing body or its designated agent for review and comment. If the proposed subdivision lies partly within an incorporated city or town, the proposed plat thereof must be submitted to and approved by both the city or town and the county governing bodies. This section does not limit the authority of certain municipalities to regulate subdivisions beyond their corporate limits pursuant to section 11-3305.

(2) The governing body shall approve, conditionally approve, or reject the preliminary plat within sixty (60) days of its presentation unless the subdivider consents to an extension of the review period. The preliminary plat shall show all pertinent features of the proposed subdivision and all proposed improvements. The governing body or its designated agent or agency shall review the preliminary plat to determine whether it conforms to the local master plan if one has been adopted pursuant to sections 11-3801 through 11-3856 to the provisions of this act, and to rules and regulations prescribed or adopted pursuant to this act.

(3) The governing body or its authorized agent or agency shall hold a public hearing on the preliminary plat and shall consider all relevant evidence relating to the public health, safety and welfare, including the environmental assessment, to determine whether the plat should be approved, conditionally approved, or disapproved by the governing body. Notice of such hearing shall be given by publication in a newspaper of general circulation in the county not less than fifteen (15) days prior to the date of the hearing. The subdivider and each property owner of record immediately adjoining the land included in the plat shall also be notified



of the hearing by registered mail not less than fifteen (15) days prior to the date of the hearing. When a hearing is held by an agent or agency designated by the governing body, the agent or agency shall act in an advisory capacity and recommend to the governing body the approval, conditional approval, or disapproval of the plat. This recommendation must be submitted to the governing body in writing not later than ten (10) days after the public hearing. If the governing body rejects or conditionally approves the preliminary plat, it shall forward one (1) copy of the plat to the subdivider accompanied by a letter over the appropriate signature stating the reason for rejection or enumerating the conditions which must be met to assure approval of the final plat. After the preliminary plat is approved, the governing body and its subdivisions may not impose any additional conditions as a prerequisite to final plat approval providing said approval is obtained within one year.

(4) The basis for the governing body's decision to approve, conditionally approve, or disapprove a subdivision shall be whether the preliminary plat, environmental assessment, public hearing, planning board recommendations and additional information demonstrate that development of the subdivision would be in the public interest. The governing body shall disapprove any subdivision which it finds not to be in the public interest. To determine whether the proposed subdivision would be in the public interest the governing body shall issue written findings of fact which weigh the following criteria for public interest:

- (a) the basis of the need for the subdivision;
- (b) expressed public opinion;
- (c) effects on agriculture;
- (d) effects on local services;
- (e) effects on taxation;
- (f) effects on the natural environment;
- (g) effects on wildlife and wildlife habitat, and
- (h) effects on the public health and safety.

(5) Upon approving or conditionally approving a preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. This approval shall be in force for not more than one (1) calendar year; at the end of this period the governing body may, at the request of the subdivider, extend its approval for no more than one (1) calendar year.

(6) Subdivisions containing 5 or fewer parcels where proper access to all lots is provided and in which no land is to be dedicated to the public for parks or playgrounds are to be reviewed as follows:

(a) The governing body must approve, conditionally approve, or disapprove the first such subdivision from a tract of record within 35 days of the submission of an application for approval thereof;

(b) The governing body shall state in writing the conditions which must be met if the subdivision is conditionally approved or, if it disapproves the subdivision, what local regulations would not be met by the subdivision;

(c) The requirements for holding a public hearing and preparing an



environmental assessment shall not apply to the first such subdivision created from a tract of record;

(d) Subsequent subdivisions from a tract of record shall be reviewed under section 11-3863(5) and regulations adopted pursuant to that section.

**History:** En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977.

#### Amendments

The 1974 amendment inserted "or its designated agent" in the third sentence of subsection (1) before "for review"; inserted "unless the subdivider consents to an extension of the review period" at the end of the first sentence of subsection (2); substituted "newspaper of general circulation" in the second sentence of subsection (3) for "newspaper published"; inserted the third sentence in subsection (3); substituted "provide the subdivider with" for "affix" in the first sentence of subsection (4) and deleted "to the preliminary plat" from the end of that sentence; and deleted a former second sentence in subsection (4) reading "The governing body shall forward one (1) copy of the approval statement to the subdivider."

The 1975 amendment inserted subsection

(4); and redesignated former subsection (4) as (5).

The 1977 amendment added the last sentence of subsection (3); and added subsection (6).

#### Separability Clause

Section 4 of Ch. 498, Laws 1975 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

#### Effective Date

Section 5 of Ch. 498, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved April 21, 1975.

#### Application

A certificate of survey is not subject to review under this section. State ex rel. Swart v. Stucky, — M —, 536 P 2d 762.

**11-3867. Filing of subdivision plat with county recorder—review of final subdivision plats and certificates of survey by examining land surveyor.** (1) The governing body may require that final subdivision plats and certificates of survey be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before recording with the county clerk and recorder. When the survey data shown on the plat or certificate of survey meet the conditions set forth by or pursuant to this act, the examining land surveyor shall so certify in a printed or stamped certificate on the plat or certificate of survey; such certificate shall be signed by him.

No land surveyor shall act as an examining land surveyor in regard to a plat or certificate of survey in which he has a financial or personal interest.

(2) The governing body shall examine every final subdivision plat and shall approve it when, and only when, it conforms to the conditions of approval set forth on the preliminary plat and to the terms of this act and regulations adopted pursuant thereto. The clerk and recorder of the county shall refuse to accept any plat for record that fails to have such approval in proper form.

(3) Except as provided in subsection (4), every final subdivision plat must be filed for record with the county clerk and recorder before title to the subdivided land can be sold or transferred in any manner. If illegal transfers of any manner are made, the county attorney shall commence action to enjoin further sales or transfers, and compel compliance with

all provisions of this act. The cost of such action shall be imposed against the person transferring the property.

(4) After the preliminary plat of a subdivision has been approved or conditionally approved the subdivider may enter into contracts to sell lots in the proposed subdivision if all of the following conditions are met:

(a) that under the terms of the contracts the purchasers of lots in the proposed subdivision make any payments to an escrow agent which must be a bank or savings and loan association chartered to do business in the state of Montana.

(b) that under the terms of the contracts and the escrow agreement the payments made by purchasers of lots in the proposed subdivision may not be distributed by the escrow agent to the subdivider until the final plat of the subdivision is filed with the county clerk and recorder.

(c) that the contracts and the escrow agreement provide that if the final plat of the proposed subdivision is not filed with the county clerk and recorder within two years of the preliminary plat approval, the escrow agent shall immediately refund to each purchaser any payments he has made under the contract, and

(d) that the contracts contain the following language conspicuously set out therein: "The real property which is the subject hereof has not been finally platted, and until a final plat identifying the property has been filed with the county clerk and recorder, title to the property cannot be transferred in any manner."

History: En. Sec. 9, Ch. 500, L. 1973; amd. Sec. 7, Ch. 334, L. 1974; amd. Sec. 1, Ch. 553, L. 1977.

#### Amendments

The 1974 amendment substituted "The governing body may require that final subdivision plats and certificates of survey" at the beginning of subsection (1) for "All final subdivision plats shall"; added "before recording with the county clerk and recorder" at the end of the first sentence of subsection (1); deleted a former second sentence in subsection (1) reading "He shall ascertain that all features, such as streets, drainage, and all other improvements and facilities to be operated or maintained with public funds, are essentially the same as those shown on the approved preliminary plat; that the permanent control monuments meet requirements prescribed pursuant to this act; that all exterior boundaries and corners of the tract are shown in sufficient detail so as to leave no doubt as to how they were established; and that all monuments and

references marking exterior corners conform to standards of size and position promulgated pursuant to this act"; inserted "or certificate of survey" after "plat" throughout the section; deleted "other than as draftsman of the plat" from the end of the second paragraph of subsection (1); substituted "title to" in the first sentence of subsection (3) for "any interest in"; and deleted "rented, leased" after "sold" and deleted "lease" after "sale" in the first sentence of subsection (3).

The 1977 amendment inserted the exception at the beginning of subsection (3); deleted "or offered for sale or transfer" at the end of the first sentence of subsection (3); deleted "or offers" after "illegal transfers" in the second sentence of subsection (3); deleted "or offers of sale or transfer" after "sales or transfers" in the second sentence of subsection (3); deleted "or offering to transfer" before "the property" in the last sentence of subsection (3); and added subsection (4).

**11-3868. Fees.** The governing body may establish reasonable fees to be paid by the subdivider to defray the expense of reviewing subdivision plats.

History: En. Sec. 10, Ch. 500, L. 1973.

## DECISIONS UNDER FORMER LAW

**Certificate of Survey** ... to a reviewing fee. *State ex rel. Swart v. Stucky*, — M —, 536 P 2d 762.

A certificate of survey was not subject

**11-3869. Covenants run with the land.** All covenants shall be considered to run with the land, whether marked or noted on the subdivision plat or contained in a separate instrument recorded with the plat.

**History:** En. Sec. 11, Ch. 500, L. 1973.

**11-3870. Vacation of plat—easements of utilities.** (1) Any plat prepared and recorded as herein provided may be vacated either in whole or in part as provided by sections 11-2801 and 11-2803, and upon such vacation the title to the streets and alleys of such vacated portions to the center thereof shall revert to the owners of the properties within the platted area adjacent to such vacated portions; provided however, that when any pole line, pipeline, or any other public or private facility that is located in a vacated street or alley at the time of the reversion of the title thereto, the owner of said public or private utility facility shall have an easement over the vacated land to continue the operation and maintenance of the public utility facility.

(2) All plats, certificates of survey, and other title records recorded after June 30, 1973, and prior to the effective date of this act in accordance with the law in force at the time of recording, and all plats, certificates of survey, and other title records recorded prior to July 1, 1973, and which have not been subsequently vacated are hereby validated, notwithstanding irregularities, and have the same legal status as plats recorded under the provisions of this act.

(3) The recording of any plat made in compliance with the provisions of this act shall serve to establish the identity of all lands shown on and being a part of such plat. Where lands are conveyed by reference to a plat, the plat itself or any copy of the plat properly certified by the county clerk and recorder as being a true copy thereof, shall be regarded as incorporated into the instrument of conveyance and shall be received in evidence in all courts of this state.

(4) This act shall not be applicable to deeds, contracts, leases, or other conveyances executed prior to the effective date of this act. Any instrument affecting real property which was executed prior to July 1, 1973, shall be deemed to be valid notwithstanding any failure to comply with platting or subdividing requirements in effect prior to July 1, 1973, and shall have the same force and effect as instruments complying with such platting and subdividing requirements.

**History:** En. Sec. 12, Ch. 500, L. 1973; amd. Sec. 8, Ch. 334, L. 1974.

**Amendments**

The 1974 amendment inserted "certificates of survey" in subsection (2) after "All plats"; inserted "after June 30, 1973,

and" in subsection (2) after "records recorded"; inserted "and all plats, certificates of survey, and other title records recorded prior to July 1, 1973," in subsection (2); added subsection (4); and made a minor change in phraseology.

**11-3871. Donations or grants to public considered a grant to donee.** Every donation or grant to the public, or to any person, society, or corporation, marked or noted on a plat is to be considered a grant to the donee.

**History:** En. Sec. 13, Ch. 500, L. 1973.



**11-3872. Certificate of survey—when required—contents—form.** (1) Within one hundred eighty (180) days of the completion of a survey the registered land surveyor responsible for the survey, whether he is privately or publicly employed, shall prepare and file for record a certificate of survey in the county in which the survey was made if the survey:

(a) provides material evidence not appearing on any map filed with the county clerk and recorder or contained in the records of the United States bureau of land management;

(b) reveals a material discrepancy in such map;

(c) discloses evidence to suggest alternate locations of lines or points;

(d) establishes one or more lines not shown on a recorded map the positions of which are not ascertainable from an inspection of such map without trigonometric calculations.

(2) A certificate of survey will not be required for any survey which is made by the United States bureau of land management or which is preliminary or which will become part of a subdivision plat being prepared for recording under the provisions of this act.

(3) Certificates of survey shall be legibly drawn, printed, or reproduced by a process guaranteeing a permanent record and shall conform to monumentation and surveying requirements promulgated under this act.

**History: En. Sec. 14, Ch. 500, L. 1973.**

**Certificate of Survey Distinguished from Plat**

Where appellant attempted to file document entitled "A Certificate of Survey . . .," and its purpose was to establish boundaries and property description for

deed on entire single parcel and clearly did not conform to requirements of "plat" set forth in section 11-3861(6), respondent had clear legal duty to accept appellant's document for filing as "certificate of survey." State ex rel. Swart v. Stucky, — M —, 536 P 2d 762.

**11-3873. Index of plats to be kept by county clerk and recorder.** The county clerk and recorder shall maintain an index of all recorded subdivision plats and certificates of survey. This index shall list plats and certificates of survey by the quarter section, section, township, and range in which the platted or surveyed land lies and shall list the recording or filing numbers of all plats depicting lands lying within each quarter section. Each quarter section list shall be definitive to the exclusion of all other quarter sections. The index shall also list the names of all subdivision plats in alphabetical order and the place where filed.

**History: En. Sec. 15, Ch. 500, L. 1973.**

**11-3874. Correction of survey—at governing body's expense.** When a recorded plat does not definitely show the location or size of lots or blocks, or the location or width of any street or alley, the governing body may at its own expense cause a new and correct survey and plat to be made and recorded in the office of the county clerk. The corrected plat must, to the extent possible, follow the plan of the original survey and plat. The surveyor making the resurvey shall endorse the corrected plat referring to the original plat and noting the defect existing therein and the corrections made.

**History: En. Sec. 16, Ch. 500, L. 1973.**

**11-3875. Administration of oaths by registered land surveyor.** Every registered land surveyor may administer and certify oaths:

- (1) when it becomes necessary to take testimony for the identification of old corners or re-establishment of lost or obliterated corners;
- (2) when a corner or monument is found in a deteriorating condition and it is desirable that evidence concerning it be perpetuated;
- (3) when the importance of the survey makes it desirable to administer an oath to his assistants for the faithful performance of their duty.

A record of oaths shall be preserved as part of the field notes of the survey, and noted on the certificate of survey filed under this section.

**History:** En. Sec. 17, Ch. 500, L. 1973.

**11-3876. Violation—misdemeanor.** Any person who violates any provision of this act or any local regulations adopted pursuant thereto shall be guilty of a misdemeanor and punishable by a fine of not less than one hundred dollars (\$100) or more than five hundred dollars (\$500) or by imprisonment in a county jail for not more than three (3) months, or by both fine and imprisonment. Each sale, lease or transfer of each separate parcel of land in violation of any provision of this act or any local regulation adopted pursuant thereto shall be deemed a separate and distinct offense.

**History:** En. Sec. 18, Ch. 500, L. 1973;  
amd. Sec. 2, Ch. 553, L. 1977.

#### Amendments

The 1977 amendment deleted "or offer for sale, lease, or transfer" after "transfer" in the last sentence.

#### Separability Clause

Section 19 of Ch. 500, Laws 1973 read "If any provision of this act or its appli-

cation to any person or circumstances is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected."

#### Repealing Clause

Section 20 of Ch. 500, Laws 1973 read "Sections 11-601 through 11-616, 11-3843 through 11-3848, and 11-3851, R. C. M. 1947, are repealed."

## CHAPTER 39—URBAN RENEWAL LAW

### Section

- 11-3901. **Definitions.**
- 11-3906. Preparation and approval of urban renewal projects and urban renewal plans.
- 11-3907. **Powers.**
- 11-3909. Disposal of property in urban renewal area.
- 11-3910. Issuance of bonds.
- 11-3917. Prohibition against discrimination.
- 11-3921. Tax increment financing.

**11-3901. Definitions.** The following terms wherever used or referred to in this act, shall have the following meanings, unless a different meaning [is] clearly indicated by the context:

(a) to (p). \* \* \* [Same as parent volume.]

(q) "Urban renewal plan" means a plan, as it exists from time to time for one or more urban renewal areas or for an urban renewal project, which plan (1) shall conform to the comprehensive plan or parts thereof for the municipality as a whole; and (2) shall be sufficiently complete to indicate, on a yearly basis or otherwise, such land acquisition, demolition, and re-

removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the urban renewal area, zoning and planning changes, if any, land uses, maximum densities, building requirements, and the plan's relationship to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements.

(r). \* \* \* [Same as parent volume.]

(s) "Neighborhood development program" means the yearly activities or undertakings of a municipality in an urban renewal area or areas if the municipality shall elect to undertake activities on an annual increment basis. In the event of such election the municipality shall present its proposed annual increment activities or undertakings for public approval in keeping with section 11-3906 of this act. Such activity year shall relate to the budget year of the municipality.

History: En. Sec. 1, Ch. 195, L. 1959;  
amd. Sec. 1, Ch. 210, L. 1969.

#### Compiler's Notes

The compiler has inserted the bracketed word "is" in the introductory paragraph.

#### Amendments

The 1969 amendment, in subdivision (q), inserted "for one or more urban renewal areas or" after "from time to time" and in item (2), "on a yearly basis or otherwise" after "sufficiently complete to indicate"; and added subdivision (s).

**11-3906. Preparation and approval of urban renewal projects and urban renewal plans.** (a) A municipality shall not approve an urban renewal project for an urban renewal area unless the local governing body has, by resolution, determined such area to be a blighted area and designated such area as appropriate for an urban renewal project. The local governing body shall not approve an urban renewal plan until a comprehensive plan or parts of such plan for an area which would include an urban renewal area for the municipality have been prepared. For this purpose, and other municipal purposes, authority is hereby vested in every municipality to prepare, to adopt, and to revise from time to time, a comprehensive plan or parts thereof for the physical development of the municipality as a whole (giving due regard to the environs and metropolitan surroundings), to establish and maintain a planning commission for such purpose and related municipal planning activities, and to make available and to appropriate necessary funds therefor. A municipality shall not acquire real property for an urban renewal project unless the local governing body has approved the urban renewal project plan in accordance with subsection (d) hereof.

(b) to (f). \* \* \* [Same as parent volume.]

(g) If the plan or any subsequent modification thereof involves financing by the issuance of general obligation bonds of the municipality as authorized in section 11-3913, subsection (c), or the financing of water or sewer improvements by the issuance of revenue bonds under the provisions of Title 11, chapter 24, or of sections 11-2217 to 11-2221, inclusive, the question of approving the plan and issuing such bonds shall be submitted to a vote of the qualified electors of such municipality in accordance with the provisions of sections 11-2303 to 11-2310, inclusive, at the same election



and shall be approved by a majority of those qualified electors voting on such question. Aiding in the planning, undertaking or carrying out of an urban renewal project approved in accordance with this section shall be deemed a single purpose for the issuance of general obligation bonds, and the proceeds of such bonds authorized for any such project may be used to finance the exercise of any and all powers conferred upon the municipality by section 11-3907 which are necessary or proper to complete such project in accordance with the approved plan and any modification thereof duly adopted by the local governing body. Sections 11-2306 and 11-2307 shall not be applicable to the issuance of such bonds.

(h) The municipality may elect to undertake and carry out urban renewal activities on a yearly basis. In such event, the activities shall be included in the yearly budget of the municipality. Such activities need not be limited to contiguous areas; however, such activities shall be confined to the areas as outlined in the urban renewal plan as approved by the municipality in accordance with this act. The yearly activities shall constitute a part of the urban renewal plan and the municipality may elect to undertake certain yearly activities and total urban renewal projects simultaneously. The undertaking of urban renewal activities on a yearly basis shall be designated as a "neighborhood development program" and the financing of such activities shall be approved in accordance with section 11-3906, subsection (g).

**History:** En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971.

#### Compiler's Notes

Section 11-2307, referred to in the last sentence of subsection (g) of this section, was repealed by Sec. 5, Ch. 413, Laws 1973.

#### Amendments

The 1969 amendment made a minor change in punctuation in subsection (a); deleted the former first sentence of subsection (g) which read: "Upon the ap-

proval of an urban renewal project by a municipality the plan shall be submitted to a vote of the taxpayers of such municipality and shall be approved by a majority of those taxpayers voting on such question"; and added subsection (h).

The 1971 amendment substituted "qualified electors" for "taxpayers" in two places in the first sentence of subsection (g).

#### Effective Date

Section 19 of Ch. 158, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 1, 1971.

**11-3907. Powers.** Every municipality shall have all the power necessary or convenient to carry out and effectuate the purposes and provisions of this act, including the following powers in addition to others herein granted:

(a) to (i): \* \* \* [Same as parent volume.]

(j) To plan and undertake neighborhood development projects consisting of urban renewal project undertakings and activities in one or more urban renewal areas which are planned and carried out on the basis of annual increments in accordance with the provisions of this act for carrying out and planning urban renewal projects.

(k) To exercise all or any part or combination of powers herein granted.

(l) Nothing in this act shall be construed to authorize any municipality to construct or operate, as a part of any urban renewal project, any elec-

tric generation plant, electric transmission or distribution lines or other public utility facilities excepting water and sewer lines then operated by municipalities.

**History:** En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969.

**Amendments**

The 1969 amendment inserted subdivi-

sion (j) and designated former subdivisions (j) and (k) as new subdivisions (k) and (l).

## 11-3908. Eminent domain.

### Necessity for Condemnation

City's only authority to condemn on a "area" basis as for implementation of an urban renewal project is contained in this section; passage of ordinance declaring condemnation for urban renewal of blighted area did not create conclusive presumption of public use and necessity as provided by section 11-977. *City of Helena v. DeWolf*, — M —, 508 P 2d 122.

District court did not have substantial credible evidence to support its findings and its conclusions of law that taking of

property for urban renewal project was necessary where city sought to condemn defendant's property for parking facilities designed to serve structures to be built by private capital and where city was unable to predict with a reasonable probability the time when such structures would be built or in fact whether they would be built at all; "necessity" must be shown as a reasonable need with foreseeable ability to complete. *City of Helena v. DeWolf*, — M —, 508 P 2d 122.

## 11-3909. Disposal of property in urban renewal area. (a). \* \* \*

[Same as parent volume.]

(b) A municipality may dispose of real property in an urban renewal area to private persons only under such reasonable procedures as it shall prescribe or as hereinafter provided in this subsection. A municipality shall, by public notice by publication once each week for three consecutive weeks in a newspaper having a general circulation in the community, prior to the execution of any contract or deed to sell, lease, or otherwise transfer real property and prior to the delivery of any instrument of conveyance with respect thereto under the provisions of this section, invite proposals from, and make available all pertinent information to, private redevelopers or any persons interested in undertaking to redevelop or rehabilitate an urban renewal area, or any part thereof. Such notice shall identify the area, or portion thereof and shall state that such further information as is available may be obtained at such office as shall be designated in said notice. The municipality shall consider all redevelopment or rehabilitation proposals and the financial and legal ability of the persons making such proposals to carry them out. The municipality may accept such proposals as it deems to be in the public interest and in furtherance of the purposes of this act. Thereafter, the municipality may execute, in accordance with the provisions of subsection (a), and deliver contracts, deeds, leases, and other instruments of transfer.

### (c). \* \* \* [Same as parent volume.]

**History:** En. Sec. 9, Ch. 195, L. 1959; amd. Sec. 1, Ch. 134, L. 1973.

**Amendments**

The 1973 amendment substituted "reasonable procedures" for "reasonable com-

petitive bidding procedures" in the first sentence of subsection (b); substituted "shall" for "may" near the beginning of the second sentence of subsection (b); and substituted "proposals" for "bids" in four places in subsection (b).

**11-3910. Issuance of bonds.** (a) A municipality shall have the power to issue bonds from time to time in its discretion to finance the undertaking of any urban renewal project under this act, including, without limiting the generality thereof, the payment of principal and interest upon any advances for surveys and plans for urban renewal projects, and shall also have power to issue refunding bonds for the payment or retirement of such bonds previously issued by it. Such bonds shall not pledge the general credit of the municipality and shall be made payable, as to both principal and interest, solely from the income, proceeds, revenues, and funds of the municipality derived from, or held in connection with, its undertaking and carrying out of urban renewal projects under this act, including the tax increment received and pledged by the municipality pursuant to 11-3921; provided, however, that payment of such bonds, both as to principal and interest, may be further secured by a pledge of any loan, grant, or contribution from the federal government or other source, in aid of any urban renewal projects of the municipality under this act.

(b) Bonds issued under this section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and shall be subject only to the provisions of the Uniform Commercial Code and the limitations of this chapter. Bonds issued under the provisions of this act are declared to be issued for an essential public and governmental purpose, and, together with interest thereon and income therefrom, shall be exempted from all taxes.

(c) Bonds issued under this section shall be authorized by resolution or ordinance of the local governing body and may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates not exceeding 9% a year, be in such denomination or denominations, be in such form either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium), be secured in such manner, and have such other characteristics, as may be provided by such resolution, ordinance, or trust indenture or mortgage authorized pursuant thereto.

(d) [Same as parent volume.]

(e) In case any of the public officials of the municipality whose signatures appear on any bonds or coupons issued under this act shall cease to be such officials before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such officials had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this act shall be fully negotiable.

(f) In any suit, action, or proceeding involving the validity or enforceability of any bond issued under this act or the security therefor, any such bond reciting in substance that it has been issued by the municipality in connection with an urban renewal project, as herein defined, shall be conclusively deemed to have been issued for such purpose and such project shall be conclusively deemed to have been planned, located, and carried out in accordance with the provisions of this act.



(g) Bonds issued hereunder for which a tax increment is pledged pursuant to 11-3921 shall be designed to mature not later than 25 years from their date of issue and shall mature in such years and amounts that the principal and interest due on the bonds in each year shall not exceed the estimated tax increment and other estimated revenues, including proceeds of the bonds available for payment of interest thereon, pledged to their payment to be received in such year. The governing body in the resolution or ordinance authorizing the bonds shall determine the estimated tax increment and other revenues, if any, for each year the bonds are to be outstanding. In calculating the cost under 11-3921(5) for which the bonds are issued, the municipality may include an amount sufficient to pay interest on the bonds prior to receipt of tax increment pledged and sufficient for the payment thereof, and to fund any reserve fund in respect of the bonds.

**History:** En. Sec. 10, Ch. 195, L. 1959; amd. Sec. 11-109, Ch. 264, L. 1963; amd. Sec. 21, Ch. 234, L. 1971; amd. Sec. 4, Ch. 287, L. 1974; amd. Sec. 1, Ch. 532, L. 1977.

#### Amendments

The 1971 amendment deleted "not exceeding six per centum (6%) per annum" after "bear interest at such rate or rates" near the middle of subsection (c).

The 1974 amendment deleted former subsection (e) and redesignated the remaining two subsections as (e) and (f). For former subsection (e), see parent volume.

The 1977 amendment inserted "including the tax increment received and pledged by the municipality pursuant to 11-3921" in the middle of the second sentence of subsection (a); added "and the limitations of this chapter" at the end of the first sentence of subsection (b); inserted "not exceeding 9% a year" near the middle of subsection (c); substituted "ordinance, or trust indenture or mortgage authorized" near the end of subsection (c) for "or trust indenture or mortgage issued"; and added subsection (g).

**11-3917. Prohibition against discrimination.** For all of the purposes of this act, no person may be subjected to discrimination because of race, religion, creed, color, or national origin.

**History:** En. Sec. 17, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1977.

#### Amendments

The 1977 amendment substituted "may

be subjected to discrimination because of race, religion, creed, color, or national origin" for "shall, because of race, creed, color, or national origin, be subjected to any discrimination."

**11-3921. Tax increment financing.** (1) Any urban renewal plan, as defined in section 11-3901, may contain a provision or be amended to contain a provision for the segregation and application of tax increment, as provided in this section. Property taxes for the payment of all bonds of each taxing body other than tax increment bonds authorized in this chapter must be levied against all property within the taxing body subject to taxation without limitation by the provisions of this section. No property taxes, except the tax increment derived from property within the urban renewal area, may be applied to the payment of bonds issued pursuant to section 11-3910 for which a tax increment has been pledged.

(2) For purposes of this section the following definitions apply unless otherwise provided or indicated by the context:

(a) "Original taxable value" means the taxable value of all property within an urban renewal area subject to taxation, as calculated from the

assessment roll last equalized prior to the effective date of a tax increment financing provision.

(b) "Actual taxable value" means the taxable value of all taxable property within an urban renewal area as calculated from the assessment roll last equalized.

(c) "Incremental taxable value" means the amount, if any, by which the actual taxable value exceeds the original taxable value of all property within an urban renewal area subject to taxation.

(d) "Tax increment" means the collections realized from extending the tax levies, expressed in mills, of all taxing bodies in which the urban renewal area or a part thereof is located against the incremental taxable value.

(e) "Tax increment provision" means a provision for the segregation and application of tax increment as authorized by this section.

(f) "Taxes" mean all taxes levied by a taxing body against property on an ad valorem basis.

(g) "Taxing body" means any city, town, county, school district, or other political subdivision or governmental unit of the state, including the state, which levies taxes against property within the urban renewal area.

(3) The clerk of the municipality shall file a certified copy of each urban renewal plan or amendment thereto containing a tax increment provision with the state, county or city officers responsible for assessing and determining the taxable value of taxable property within the urban renewal area or any part thereof. A certified copy of the plan or amendment shall also be filed with the clerk or other appropriate officer of each of the affected taxing bodies. The officer or officers responsible for assessing and determining the taxable value of the taxable property located within the urban renewal area shall, immediately upon receipt of the tax increment provision and each year thereafter, calculate and report to the municipality and to any other affected taxing body the original, actual, and incremental taxable value of such property.

(4) Mill rates of taxing bodies for taxes levied after the effective date of the tax increment provision shall be calculated on the basis of the sum of the taxable value, as shown by the last equalized assessment roll, of all taxable property located outside the urban renewal area and the original taxable value of all taxable property located within the urban renewal area. The mill rate so determined shall be levied against the sum of the actual taxable value of all taxable property located within as well as outside the urban renewal area. The tax increment, if any, received in each year from the levy of the combined mill rates of all the affected taxing bodies against the incremental taxable value within the urban renewal area shall be paid into a special fund held by the treasurer of the municipality and used as provided in this section. The balance of the taxes collected in each year shall be paid to each of the taxing bodies as otherwise provided by law.

(5) The tax increments may be used by the municipality to pay the following costs of or incurred in connection with an urban renewal project: land acquisition; demolition and removal of structures; relocation of occu-

pants; and the acquisition, construction, and improvement of streets, curbs, gutters, sidewalks, pedestrian malls, alleys, parking lots and off-street parking facilities, sewers, waterlines, waterways, public buildings, and other public improvements authorized by Title 11, chapter 22, and items of personal property to be used in connection with improvements for which the foregoing costs may be incurred; or the tax increment may be pledged to the payment of the principal of premiums, if any, and interest on bonds which the municipality may issue for such purposes pursuant to 11-3910 for the purpose of providing funds to pay such costs. The municipality may also enter into agreements with the other affected taxing bodies to remit to such taxing bodies any portion of the annual tax increment not currently required for the payment of such costs or pledged to the payment of the principal of premiums, if any, and interest on such bonds.

(6) At the time of adoption of a tax increment provision or at any time subsequent thereto, the governing body of the municipality may provide that only a portion of the tax increment from the incremental taxable value shall be segregated as provided in subsections (3) and (4) of this section. The portion so determined shall be reported by the clerk to the officers and taxing bodies to which the increment provision is reported. Thereafter, in determining the mill rates of affected taxing bodies, the taxable values against which the mill rates are levied, and the tax increment to be paid to the municipality, the original taxable value shall be increased and the incremental taxable value shall be decreased.

(7) The tax increment provision shall terminate upon the 10th year following its adoption or upon the payment or provision for payment in full or discharge of all bonds for which the tax increment has been pledged and the interest thereon, whichever last occurs. Any amounts remaining in the special fund or any reserve fund after termination of the tax increment provision shall be distributed among the various taxing bodies in proportion to their property tax revenues from the district. After termination of the tax increment provision, all taxes shall be levied upon the actual taxable value of the taxable property in the urban renewal area, and shall be paid into the funds of the respective taxing bodies. No bonds with tax increment provisions for the repayment thereof may be issued subsequent to 10 years after April 29, 1977.

**History:** En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977.

#### **Compiler's Notes**

This section was amended twice in 1977, once by Ch. 532 and once by Ch. 566. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

#### **Title of Act**

An act authorizing self-liquidation by cities of costs of urban renewal projects; and amending sections 11-3910 and 84-4701.3, R. C. M. 1947.

#### **Amendments**

The 1975 amendment inserted the subsection (1) designation; substituted "benefit of the state, any city, county, or other political subdivisions for which taxes are levied (hereafter referred to as taxing bodies)" in subsection (1) for "benefit of any city which has the power to levy a tax"; substituted references to taxing bodies for references to cities throughout the section; added "as provided in subsections (3) and (4) of this section" to the end of subsection (1); inserted subsection (2); redesignated former subdivision (1) as subsection (3); inserted "prior" before "assessed value" in the first sentence of subsection (3); deleted "as shown upon the assessment roll used in connection



with the taxation of such property for such city last equalized prior to the effective date of the urban renewal plan" in the first sentence of subsection (3) after "urban renewal area"; added the second sentence of subsection (3); substituted subsection (4) for former subdivision (2) which read "that portion of the levied taxes for such city each year in excess of such amount shall be allocated to and when collected, shall be paid into a special fund held by the city treasurer to pay the principal and interest on bonds, the issue of which is authorized by section 11-3910, R. C. M. 1947"; added subsections (5) and (6); and made minor changes in phraseology.

Prior to the 1977 amendments this section read: "(1) Any urban renewal plan, as defined in section 11-3901, may contain a provision or be amended to contain a provision providing that taxes levied on taxable property in an urban renewal area each year by or for the benefit of the state, any city, county, or other political subdivisions for which taxes are levied, (hereafter referred to as taxing bodies) shall be allocated, after the effective date of such provision as provided in subsections (3) and (4) of this section.

"(2) For the purposes of this section, (a) 'prior assessed value' means the assessed value of the taxable property in the urban renewal area as shown on the assessment roll last equalized prior to the effective date of the urban renewal plan; notwithstanding the provisions of this act, any increase resulting from a comprehensive revaluation of all property within the county may be applied to the property for the purpose of determining the 'prior assessed value';

"(b) the word 'taxes' includes, but is not limited to, all levies on an ad valorem basis upon land or real property.

"(3) The portion of taxes produced by levies for a taxing body upon the total sum of the prior assessed value of the taxable property in the urban renewal area shall be allocated and paid into the funds of the taxing body like taxes paid by or for the taxing body on all other property. For the purpose of allocating taxes levied by a taxing body that did not include the urban renewal area on the effective date of the provision allocating the taxes but to which the urban renewal area has since been annexed or otherwise

included, the assessment roll of the county last equalized prior to the effective date of the provision shall be used in determining the prior assessed value.

"(4) The portion of taxes levied by such taxing body each year in excess of the amount levied under subsection (3) shall be paid by the county treasurer into a special fund held by the city treasurer to pay the principal and interest on bonds issued under authority of section 11-3910, except that taxes for the payment of all bonds and interest of each taxing body must be levied against all taxable property within the taxing body without limitation by the provisions of this subsection. Until the actual assessed valuation of all property in the urban renewal area exceeds the prior assessed value of all taxable property within such area, the actual assessed value of all property shall be used for taxation purposes.

"(5) The portion of taxes allocated in subsection (4) above, and the special fund into which they are paid, may be pledged by a municipality for the payment of the principal and interest on bonds issued under the authority of section 11-3910, or bonded indebtedness, incurred by a municipality to refinance in whole or in part, the urban renewal project. Prior to the sale of any bonds, there shall be (a) an election under sections 11-2308 and 11-2309 approving such sale, or (b) a petition for the sale signed by the owners of record of at least fifty-one per cent (51%) of the land within the urban renewal district.

"(6) After all bonds and interest have been paid, all moneys received from taxes upon property within the urban renewal area shall be allocated as taxes on all other property."

#### Effective Date and Transition

Section 3 of Ch. 532, Laws 1977 read "This act is effective on its passage and approval. Any municipality which adopted a provision for the allocation of taxes under 11-3921 prior to the effective date of this act may implement and carry out such provision under this act." Approved April 29, 1977.

#### Repealing Clause

Section 4 of Ch. 532, Laws 1977 read "Sections 11-3922, 11-3923, 11-3924, and 11-3925, R. C. M. 1947, are repealed."

### 11-3922 to 11-3925. Repealed.

#### Repeal

Sections 11-3922 to 11-3925 (Secs. 2, 3, 5, 7, Ch. 287, L. 1974; Sec. 2, Ch. 452, L.

1975), relating to urban renewal, were repealed by Sec. 4, Ch. 532, Laws 1977.



provide access to, and shall not be constructed so as to hinder the operation and maintenance of the ditch. The owner or owners of open ditches carrying irrigation or other water, shall not be included in any special improvement district under this act for the purpose of assessment to support the special improvement districts for the installation, repair, or maintenance of any protective devices.

**History:** En. Sec. 6, Ch. 63, L. 1961;  
amd. Sec. 4, Ch. 306, L. 1969.

#### Amendments

The 1969 amendment added the second through the fourth sentences.

## CHAPTER 41—INDUSTRIAL DEVELOPMENT PROJECTS

### Section

11-4101. Definition of terms.

11-4103. Limited obligation bonds—form and contents—sale—negotiability—hearing prior to issuance.

11-4107. Use of proceeds of bond sales.

11-4110. Advice and information by department of community affairs.

11-4111. Levy authorized—uses—restrictions.

**11-4101. Definition of terms.** As used in this act, unless the context otherwise requires:

(1) "Municipality" means any incorporated city or town in the state;

(2) "Project" means any land, any building or other improvement, and all real and personal properties deemed necessary in connection therewith, whether or not now in existence, which shall be suitable for use for commercial, manufacturing, agricultural, or industrial enterprises, recreation or tourist facilities, state and federal governmental facilities, and retirement housing, hospitals, long-term care facilities or medical facilities;

(3) "Governing body" means the board or body in which the general legislative powers of the municipality or county are vested;

(4) "Mortgage" means a mortgage or a mortgage and deed of trust, or other security device; and

(5) "Agricultural enterprises" means any agricultural enterprise including, but not limited to, producing, warehousing, storing, fattening, treating, handling, distributing or selling farm products or livestock.

**History:** En. Sec. 1, Ch. 51, L. 1965;  
amd. Sec. 1, Ch. 50, L. 1969; amd. Sec. 1,  
Ch. 386, L. 1971; amd. Sec. 1, Ch. 234, L.  
1975; amd. Sec. 1, Ch. 374, L. 1975.

Chapter 234, Laws of 1975, inserted  
"state and federal governmental facilities"  
in subdivision (2).

Chapter 374, Laws of 1975, inserted  
"agricultural" after "manufacturing" and  
"retirement housing" before "hospitals" in  
subdivision (2); added subdivision (5) defining  
"agricultural enterprises"; and made minor changes in phraseology, punctuation and style.

### Compiler's Notes

This section was amended twice in 1975, once by Ch. 234 and once by Ch. 374. Neither amendatory act mentioned nor included the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

### Amendments

The 1969 amendment added "recreation or tourist facilities, and hospitals, long-term care facilities or medical facilities" at the end of subdivision (2).

The 1971 amendment inserted "commercial" in subdivision (2).

### Effective Date

Section 2 of Ch. 50, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 20, 1969.

### Special Purpose Law

This act is designed for special purpose and prevails over and is not limited by general legislation that county not make lease longer than ten years (16-1030),



that county not sell land except at public auction (16-1009), or that county not contract for construction except on public

bidding (16-1803). *Fickes v. Missoula County*, 155 M 258, 470 P 2d 287.

### 11-4102. General municipal and county powers.

#### Constitutionality

Provision for issuance of revenue bonds under this act does not violate Montana constitution article XIII, section 1, since it is done for a public purpose, despite the fact that certain individual associations or corporations may benefit from the legislation. *Fickes v. Missoula County*, 155 M 258, 470 P 2d 287.

#### Judicial Review

Where project was entirely within county, court would not consider hypothetical conflict between section 16-101 and provision in this section allowing project partially without county. *Fickes v. Missoula County*, 155 M 258, 470 P 2d 287.

**11-4103. Limited obligation bonds—form and contents—sale—negotiability—hearing prior to issuance.** (1) to (4) \* \* \* [Same as parent volume.]

(5) Prior to the issuance of any bonds, under the authority of this act, by any municipality or county, the governing body shall give notice and hold a public hearing on the proposed project. At least once a week for three (3) consecutive weeks prior to the date set for the hearing, the governing body shall publish in a newspaper of general circulation in the municipality or county a notice of the time and place of the hearing. The governing body shall not approve the bonds as provided in this act unless it appears, after the public hearing, that such approval is in the public interest of the municipality or county.

**History:** En. Sec. 3, Ch. 51, L. 1965; amd. Sec. 1, Ch. 304, L. 1974.

#### Constitutionality

This section does not violate Montana constitution article XIII, section 5, since it provides for revenue bonds and does not create debt or liability within the meaning of article XIII, section 5. *Fickes v. Missoula County*, 155 M 258, 470 P 2d 287.

#### Amendments

The 1974 amendment added subsection (5).

**11-4107. Use of proceeds of bond sales.** The proceeds from the sale of any bonds issued under authority of this act shall be applied only for the purpose for which the bonds were issued; provided, that any accrued interest and premium received in any such sale shall be applied to the payment of the principal of or the interest on the bonds sold; and provided further, that if for any reason any portion of such proceeds shall not be needed for the purpose for which the bonds were issued, then such unneeded portion of said proceeds shall be applied to the payment of the principal of or the interest on said bonds. The cost of acquiring or improving any project shall be deemed to include the following: The actual cost of acquiring or improving real estate for any project; the actual cost of construction of all or any part of a project which may be constructed, including architects' and engineers' fees, all expenses in connection with the authorization, sale and issuance of the bonds to finance such acquisition or improvement; bond reserves and premiums for insurance of lease rentals pledged to pay the bonds; and the interest on such bonds for a reasonable time prior to construction, during construction, and for not exceeding six (6) months after completion of construction.

**History:** En. Sec. 7, Ch. 51, L. 1965; amd. Sec. 2, Ch. 234, L. 1975.

#### Amendments

The 1975 amendment inserted "bond reserves and premiums for insurance of lease rentals pledged to pay the bonds" near the end of the section.

#### Effective Date

Section 2 of Ch. 234, Laws 1975 pro-

vided the act should be in effect from and after its passage and approval. Approved April 3, 1975.

#### Equipment Acquired

Pollution controls or other equipment useful in industrial project created under this act may be acquired under provisions of this section from the proceeds of bond sales. *Fickes v. Missoula County*, 155 M 258, 470 P 2d 287.

### 11-4108. Taxation of projects.

#### Constitutionality

This section does not violate provisions of Montana constitution article XII, section 2 against taxing property of county or municipality, since county or municipi-

pality has only trust as opposed to beneficial interest, and taxation is based on use of property. *Fickes v. Missoula County*, 155 M 258, 470 P 2d 287.

**11-4110. Advice and information by department of community affairs.** The department of community affairs shall furnish advice and information in connection with a project when requested to do so by a county or municipality.

**History:** En. Sec. 10, Ch. 51, L. 1965; amd. Sec. 56, Ch. 348, L. 1974; amd. Sec. 21, Ch. 213, L. 1975.

#### Amendments

The 1974 amendment substituted "de-

partment of intergovernmental relations" for "state planning board."

The 1975 amendment substituted "department of community affairs" for "department of intergovernmental relations."

**11-4111. Levy authorized—uses—restrictions.** (1) Upon an affirmative vote of a majority of the qualified voters voting in a city, county, or town on the question of whether the governing body may levy a tax for economic development, the governing body of that city, county, or town is authorized to levy in any one election up to 1 mill upon the taxable value of all the property in the county, city, or town subject to taxation for the purpose of economic development, for a period not to exceed 5 years.

(2) Funds derived from this levy may be used for purchasing land for industrial parks, constructing buildings to house manufacturing and processing operations, conducting preliminary feasibility studies, promoting economic development opportunities in a particular area, and other activities generally associated with economic development. These funds may not be used to directly assist an industry's operations by loan or grant or to pay the salary or salary supplements of government employees.

(3) The governing body of the county, city, or town may use the funds derived from this levy to contract with local development companies and other associations or organizations capable of implementing the economic development function.

**History:** En. 11-4111 by Sec. 1, Ch. 311, L. 1975; amd. Sec. 32, Ch. 566, L. 1977.

or town for the purpose of economic development.

#### Title of Act

An act authorizing the governing bodies of counties, cities, or towns to levy up to one (1) mill upon the assessed value of all taxable property in the county, city,

#### Amendments

The 1977 amendment substituted "taxable value" in subsection (1) for "assessed value"; and made minor changes in phraseology and punctuation.

CHAPTER 44—INTERLOCAL CO-OPERATION COMMISSION—  
IMPROVEMENT OF ESSENTIAL LOCAL GOVERNMENTAL SERVICES

## Section

- 11-4401. Declaration of policy and purpose.
- 11-4402. Definitions.
- 11-4403. Establishment of an interlocal co-operation commission.
- 11-4404. Selection of an interlocal co-operation commission.
- 11-4405. Time of appointment.
- 11-4406. Meetings of commission.
- 11-4407. Vacancies—compensation—open meetings—quorum—rules.
- 11-4408. Considerations in preparation of proposals.
- 11-4409. Comprehensive program.
- 11-4410. Recommendations to implement program.
- 11-4411. Consideration of property and debts.
- 11-4412. Public hearings on proposed program.
- 11-4413. Procedure for making recommendations.
- 11-4414. Additional powers and duties.
- 11-4415. Appropriations.
- 11-4416. Term of commission.

**11-4401. Declaration of policy and purpose.** (1) It is hereby declared to be the public policy of the state of Montana to provide for the residents of the state the means of improving their local governments so that essential services can be provided more effectively and economically. The growth of urban population, the necessity to maintain local governmental services in areas of increasing population on one hand, and in areas of decreasing population on the other, and the movement of people into suburban areas have created varied problems in the provision of public services and facilities which often cannot be met adequately by individual units of local government.

(2) It is the purpose of this act to provide a method whereby the residents of local areas in Montana may propose local solutions to these common problems in order that proper growth and development of the state may be assured and the health and welfare of the people therein secured.

**History:** En. Sec. 1, Ch. 129, L. 1969.

**Title of Act**

An act providing for the creation of

interlocal co-operation commissions to consider and propose means of improving essential local governmental services in Montana.

**11-4402. Definitions.** As used in this act:

(1) "Commission" means an interlocal co-operation commission established pursuant to section 3 [11-4403] of this act.

(2) "Principal city" means the city having the largest population in the county under consideration according to the latest federal decennial census.

(3) "Unit of local government" means a county, city or town.

**History:** En. Sec. 2, Ch. 129, L. 1969.

**11-4403. Establishment of an interlocal co-operation commission.** An interlocal co-operation commission may be established in either of two ways:

(1) A joint resolution providing for the establishment of an interlocal co-operation commission may be adopted by a separate vote of a majority of the governing bodies of the county, cities and towns having any jurisdiction in the county under consideration. A certified copy of such resolution or certified copies of such concurring resolutions shall be transmitted



to the clerk and recorder of the county and an interlocal co-operation commission shall be deemed to be authorized.

(2) A petition requesting the establishment of an interlocal co-operation commission shall be signed by at least ten (10) per cent of the qualified voters within the county registered for the last preceding general election and shall be filed with the clerk and recorder of the county.

Upon receipt of such a petition, the clerk and recorder shall examine the source and certify to the sufficiency of the signatures thereon. Within thirty (30) days following receipt of such petition, the clerk and recorder shall transmit the same to the board of county commissioners and to the governing body of all cities and towns having any jurisdiction in the county together with his certificate as to the sufficiency thereof and an interlocal co-operation commission shall be deemed to be authorized.

Only one (1) commission may be established in a county at any one time.

**History:** En. Sec. 3, Ch. 129, L. 1969.

**11-4404. Selection of an interlocal co-operation commission.** (1) Any interlocal co-operation commission established pursuant to this act shall consist of members to be selected as follows:

(a) Four (4) members selected by the county commissioners.

(b) Four (4) members appointed by the mayor of the principal city and confirmed by the governing body of the city.

(c) One (1) member appointed by the mayor of each of the other cities and towns in the county and confirmed by the governing body of the city or town.

(d) One (1) member, who shall be chairman of the interlocal co-operation commission, selected by the other members of the commission at their initial meeting.

(2) Each member shall reside at the time of his appointment within the county if selected by the board of county commissioners or within the city or town by which appointed.

(3) No member shall be an official or employee of any unit of local government.

**History:** En. Sec. 4, Ch. 129, L. 1969.

**11-4405. Time of appointment.** The members of the interlocal co-operation commission shall be appointed within sixty (60) days after the commission is authorized.

**History:** En. Sec. 5, Ch. 129, L. 1969.

**11-4406. Meetings of commission.** (1) Not later than eighty (80) days after the commission is authorized, the members of the commission shall meet and organize at a time which shall be set by the board of county commissioners.

(2) At the first meeting of the commission, one (1) of the members appointed by the board of county commissioners shall be designated by that body to serve as temporary chairman. As its first official act, the commission shall select a chairman from outside its own membership.

(3) Further meetings of the commission shall be held upon call of the chairman, the vice-chairman in the absence or inability of the chairman, or a majority of the members of the commission.

History: En. Sec. 6, Ch. 129, L. 1969.

**11-4407. Vacancies—compensation — open meetings — quorum — rules.**

(1) In case of a vacancy for any cause, a new member shall be appointed in the same manner as the member he replaces.

(2) Members of a commission shall receive no compensation but shall receive actual and necessary travel and other expenses incurred in the performance of official duties.

(3) All meetings of the commission shall be open to the public.

(4) A majority of the members of the commission shall constitute a quorum for the transaction of business.

(5) Each member shall have one (1) vote. A favorable vote by a majority of the entire commission shall be necessary for any action permitted by section 13 [11-4413] of this act, but other actions may be by a majority of those present and voting. Each commission may adopt such other rules for its proceedings as it deems desirable.

History: En. Sec. 7, Ch. 129, L. 1969.

**11-4408. Considerations in preparation of proposals.** A commission shall consider the various areas included within the county, including areas incorporated as municipalities, unincorporated areas essentially urban in nature, unincorporated areas with both urban and rural characteristics and predominantly rural areas. In the formation of its proposals which can include arrangements for county-wide governmental services and urban area services in both incorporated and unincorporated areas, a commission shall study and take into consideration:

(1) The existing land use within the county, including the location of highways and natural geographic barriers to and routes for transportation, making use, wherever possible, of comprehensive land-use plans prepared for the area by organized planning boards or other reliable surveys;

(2) The need for organized local governmental services, the present cost and adequacy of local governmental services and controls in the area, probable future needs for such services and controls, and the probable effect of alternative courses of action on the cost and adequacy of services and controls in the areas concerned and in adjacent areas;

(3) Population density, distribution and growth, per capita assessed valuation, the likelihood of significant growth in the areas concerned and in adjacent incorporated and unincorporated areas;

(4) The boundaries of existing units of local government;

(5) Maintenance of citizen access to, control of, and participation in local government;

(6) Such other matters as might affect provision of local governmental services on an equitable basis and provide more efficient and economical administration thereof.

History: En. Sec. 8, Ch. 129, L. 1969.

**11-4409. Comprehensive program.** The commission shall prepare a comprehensive program for the furnishing of local governmental services, on both county-wide and urban areas bases, as it deems desirable.

**History:** En. Sec. 9, Ch. 129, L. 1969.

**11-4410. Recommendations to implement program.** In preparing its comprehensive program for furnishing local governmental services, a commission may recommend one or more of the following courses of action:

(1) Performance of one or more services by any existing unit of local government;

(2) Consolidation of specified services by transfer of functions between local units of government, by creation of joint administrative agencies or by contractual agreements;

(3) Consolidation of any existing special service district with one or more other special service districts to perform all of the services provided by any of them;

(4) Creation of a new special service district to perform one or more services, with provision for the dissolution of any existing special service districts performing like service or services within the proposed boundaries of such new district;

(5) Annexation of unincorporated territory to any existing city or town;

(6) Consolidation of any existing cities and towns with any other existing cities and town;

(7) Consolidation of any cities and towns with the county in which they lie;

(8) Creation of a permanent council of governments, consisting of members of the governing bodies of the units of local government within and including the county concerned;

(9) Creation of a unified government for the entire county vested with (a) any and all powers which cities are, or may hereafter be, authorized or required to exercise under the constitution and general laws of the state of Montana, and (b) any and all powers which counties are, or may hereafter be, authorized or required to exercise under the constitution and general laws of the state of Montana.

(10) Any other change it considers desirable involving creation, dissolution, or consolidation of units of local government in the county under consideration, or involving alteration of their boundaries, powers, and responsibilities, consistent with provisions of the constitution of the state of Montana.

**History:** En. Sec. 10, Ch. 129, L. 1969.

**11-4411. Consideration of property and debts.** (1) The commission shall determine the value and amount of all property used in performing any local governmental service and all bonded and other indebtedness of units of local government attributable to the acquisition of such property and affected by its comprehensive program for both urban area services and county-wide services and shall determine and provide in its proposed



program for assumption or equitable adjustment of such property and debts of each unit of local government affected.

History: En. Sec. 11, Ch. 129, L. 1969.

**11-4412. Public hearings on proposed program.** Within three (3) years after the date of its organization, the commission shall complete the preparation of its proposals for the provision of both urban area services and county-wide services and shall provide for adequate publication and explanation of its program. Notice of hearings shall be published once each week for at least two (2) weeks preceding a hearing, in at least one (1) newspaper of general circulation in the county. The notice shall state the time and place of the hearing.

History: En. Sec. 12, Ch. 129, L. 1969;      Amendments  
amd. Sec. 1, Ch. 70, L. 1971.

The 1971 amendment extended the time for the preparation of proposals from two years to three years after organization.

**11-4413. Procedure for making recommendations.** After public hearing, the commission shall submit proposals contained in its comprehensive program for action as follows:

(1) If the comprehensive plan of the commission includes the creation of, or any change, alteration, consolidation, dissolution or annexation with respect to any unit of local government or special district, a procedure for which is provided by law upon petition by the people and an election, the commission shall make public its proposal or proposals to the people in the area or areas affected.

(2) If the comprehensive plan includes any change, alteration, inter-local agreement, consolidation, dissolution, or annexation with respect to any unit of local government or special district which can be carried into effect under existing law by action of the governing bodies of the units affected, the commission shall recommend the necessary action to the governing body or bodies of the units of government concerned.

(3) If the comprehensive plan includes the creation of, or any change, alteration, consolidation, dissolution or annexation with respect to any unit of local government or special district which necessitates enabling legislation or amendments to the general laws or constitution of the state of Montana, the commission shall make such recommendation or recommendations to the ensuing legislative assembly.

History: En. Sec. 13, Ch. 129, L. 1969.

**11-4414. Additional powers and duties.** A commission shall have the following additional powers and duties:

(1) To contract and co-operate with other agencies, public or private as it considers necessary for the rendition and affording of such services, facilities, studies and reports to the commission as will best assist it to carry out the purposes for which the commission was established. Upon request of the chairman of the commission, all state agencies and all counties and other units of local government, and the officers and employees thereof, shall furnish the commission such information as may be necessary for

carrying out its functions which may be available to or procurable by such agencies or units of government.

(2) To consult and retain such experts, and to employ such executive, clerical and other staff, as, in the commission's judgment, may be necessary.

(3) To accept and expend moneys from any public or private source, including the federal government. All moneys received by the commission shall be deposited with the county treasurer in the county. The county treasurer is authorized to disburse funds of the commission on its order.

(4) To do any and all other things as are consistent with and reasonably required to perform its functions under this act.

History: En. Sec. 14, Ch. 129, L. 1969.

**11-4415. Appropriations.** The units of local government within the county under consideration and the county may appropriate funds for the necessary expenses of the commission.

History: En. Sec. 15, Ch. 129, L. 1969.

**11-4416. Term of commission.** All commissions shall terminate five (5) years from the date of their establishment. However, a commission, upon completion of its duties, may terminate earlier by a vote of three-fourths ( $\frac{3}{4}$ ) of the members favorable to such earlier termination.

History: En. Sec. 16, Ch. 129, L. 1969; amd. Sec. 2, Ch. 70, L. 1971.

#### Amendments

The 1971 amendment extended the time specified in the first sentence from four years to five years after establishment.

#### Separability Clause

Section 17 of Ch. 129, Laws 1969 read "It is the intent of the legislative assembly that if a part of this act is invalid, all

valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

#### Effective Date

Section 18 of Ch. 129, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 26, 1969.

## CHAPTER 45—URBAN TRANSPORTATION DISTRICTS

### Section

- 11-4501. Purpose.
- 11-4502. Definitions.
- 11-4503. Petition—call for public hearing.
- 11-4504. Notice and conduct of public hearing.
- 11-4505. Resolution—election.
- 11-4506. Transportation board—selection—composition.
- 11-4507. Powers of transportation board.
- 11-4508. Budget—mill levy authorized.
- 11-4509. Duties of county treasurer—warrants issued by board.
- 11-4510. Bond issues authorized.
- 11-4511. Enlargement of district—procedures.
- 11-4512. Procedure for dissolving district.
- 11-4513. Aid for public transportation—allocation formula—highway purposes.

**11-4501. Purpose.** This act authorizes the establishment of urban transportation districts to supply transportation services and facilities to district residents and other persons.

History: En. 11-4501 by Sec. 1, Ch. 355, L. 1975.

#### Title of Act

An act to provide for the creation of urban transportation districts; and providing an immediate effective date.

**11-4502. Definitions.** As used in this act:

(1) "Commissioners" means the board of county commissioners or other governing body of a county;

(2) "District" means any transportation district created under this act;

(3) "Board" means the board of transportation of any district created under this act.

**History:** En. 11-4502 by Sec. 2, Ch. 355,  
L. 1975.

**11-4503. Petition—call for public hearing.** (1) Proceedings for creation of a transportation district may be initiated by a petition, signed by not less than twenty per cent (20%) of the qualified electors who reside within the proposed transportation district. The petition shall consist of one (1) sheet or several sheets identical in form and fastened together after being circulated and signed so as to form a single, complete petition before being delivered to the county clerk. The petition shall give the address of each petitioner and shall include a map showing the limits of the proposed district. The complete petition shall be filed with the county clerk, who shall within thirty (30) days thereafter, carefully examine the same and attach to it a certificate under his official signature and the seal of his office. The certificate shall set forth: the total number of persons who are registered electors within the proposed transportation district, and which and how many of the persons whose names are on the petitions are qualified to sign such petition. If the petition is found to contain less than twenty per cent (20%) of the signatures of the qualified electors of the transportation district, the petition shall be declared void.

(2) Provided the petition contains the signatures of twenty per cent (20%) of the qualified electors of the proposed transportation district, the county clerk shall present the petition and his certificate to the commissioners at their first meeting held after he has attached his certificate.

(3) The commissioners shall thereupon examine the petition and shall by resolution call for a public hearing on the creation of such transportation district.

**History:** En. 11-4503 by Sec. 3, Ch. 355,  
L. 1975.

**11-4504. Notice and conduct of public hearing.** (1) At the time fixed for the public hearing, the commissioners shall hear all testimony offered in support of and in opposition to any petition and the creation of the district. The hearings may be adjourned from time to time for the determination of additional information, or hearing petitioners or objectors, but no adjournment may exceed two (2) weeks after the date originally noticed and published for the hearing.

(2) A notice of the public hearing shall be published in a newspaper having general circulation within the proposed transportation district once each week for at least two (2) weeks, the last publication to be at least two (2) weeks prior to the hearing. If there is no newspaper having



general circulation within the proposed district, the notice of public hearing shall be posted in at least three (3) public places within the proposed district for two (2) weeks prior to the hearing. The notice shall state the time, date, place, and purpose of the hearing and describe the boundaries of the proposed transportation district.

**History:** En. 11-4504 by Sec. 4, Ch. 355, L. 1975.

**11-4505. Resolution—election.** (1) The commissioners, upon completion of the public hearing, shall proceed by resolution to refer the creation of such district to the persons qualified to vote on such proposition. The commissioners may, in their resolution, designate whether a special election shall be held, or whether the matter shall be determined at the next general election.

(2) If a special election is ordered, the commissioners shall, in their order, specify the date for the election, the voting places, and shall appoint and designate judges and clerks therefor. The election shall be held in all respects as nearly as practicable in conformity with the general election laws.

(3) At the election, the ballots shall contain the words:

☐ Transportation District—Yes

☐ Transportation District—No.”

The judges of the election shall certify to the commissioners the results of the election.

**History:** En. 11-4505 by Sec. 5, Ch. 355, L. 1975.

**11-4506. Transportation board—selection—composition.** The district shall be governed by a transportation board. The transportation board shall consist of three (3) members appointed by a selection board composed of the commissioners and an equal number of representatives from the governing bodies of each incorporated city included or partially included in the district. The selection board shall also fill all vacancies occurring on the board. The selection board shall give public notice of its solicitation of applications for membership on the board. The notice shall be published in a newspaper having general circulation in the district, once each week for at least two (2) weeks, the last publication to be at least two (2) weeks before the appointment. If there is no newspaper having general circulation within the boundaries of the proposed district, the notice of solicitation shall be posted in at least three (3) public places within the boundaries of the proposed district for two (2) weeks before the appointment. The appointed members shall serve until the first county general election after their appointment. Thereafter, the board members shall be elected. Any qualified elector in the district may file a petition of candidacy with the county clerk and recorder of the county where the district is located. No filing fee shall be required. All candidates shall file a nonpartisan petition for candidacy. The names of the six (6) candidates receiving the highest number of votes in the primary election shall

be placed on the ballots in the county general election. The candidate receiving the highest number of votes in the county general election shall receive a four (4) year term on the board; the two (2) candidates receiving the next highest number of votes in the county general election shall receive two (2) year terms on the board. Thereafter, two (2) seats on the board shall be filled at every county general election. The candidate receiving the highest number of votes shall serve a four (4) year term, the candidate receiving the next highest number of votes shall serve a two (2) year term. The board members shall serve without pay except for necessary transportation expenses.

**History:** En. 11-4506 by Sec. 6, Ch. 355,  
L. 1975.

**11-4507. Powers of transportation board.** (1) The board shall have all powers necessary and proper to the establishment, operation, improvement, maintenance and administration of the transportation district. The district shall primarily serve the residents within the district boundaries, but may authorize service outside the district boundaries where deemed appropriate.

(2) The board shall employ a qualified administrative officer for the district. The board shall give public notice of its solicitation of applications for a qualified administrative officer.

**History:** En. 11-4507 by Sec. 7, Ch. 355,  
L. 1975.

**11-4508. Budget—mill levy authorized.** The board shall, annually, present its budget to the commissioners at the regular budget meetings as prescribed by law, and therewith certify the amount of money necessary and proper for the ensuing year. The commissioners shall, annually, at the time of levying county taxes, fix and levy a tax, in mills, upon all property within said transportation district clearly sufficient to raise the amount certified by the board. The tax so levied for all transportation district purposes other than payment of bonded indebtedness shall not in any year exceed twelve (12) mills on each dollar of taxable valuation of property within said district.

**History:** En. 11-4508 by Sec. 8, Ch. 355,  
L. 1975.

**11-4509. Duties of county treasurer—warrants issued by board.** The procedure for the collection of the tax shall be in accordance with the existing laws of the state of Montana. The funds collected under the tax levy shall be held by the county treasurer who shall be, ex officio, the treasurer for the transportation district and who shall keep a detailed account of all tax moneys paid into the fund, of all other moneys from any source received by the district, and of all payments and disbursements from the fund. Funds shall be paid out on warrants issued by direction of the board and signed by a majority of its membership.

**History:** En. 11-4509 by Sec. 9, Ch. 355,  
L. 1975.

**11-4510. Bond issues authorized.** A transportation district may borrow money by the issuance of general obligation or revenue bonds, or a combination thereof, to provide funds for the district, but the amount of bonds issued for such purpose and outstanding at any time shall not exceed five per cent (5%) of taxable property therein, as ascertained by the last assessment for state and county taxes previous to the issuance of such bonds.

**History:** En. 11-4510 by Sec. 10, Ch. 355, L. 1975.

**11-4511. Enlargement of district—procedures.** The boundaries of any transportation district may be enlarged if fifty-one per cent (51%) of the qualified electors of the area to be added to the existing district sign a petition requesting addition to such district; however, each addition must be approved by a majority vote of the transportation board. All property within any addition to the transportation district shall be subject to all existing indebtedness of the district.

**History:** En. 11-4511 by Sec. 11, Ch. 355, L. 1975.

**11-4512. Procedure for dissolving district.** (1) Any transportation district may be dissolved upon presentation to the county commissioners of a petition signed by at least fifty-one per cent (51%) of the qualified voters of such district. Upon the filing of such petition, the commissioners shall carefully examine the petition and, if it is found that the petition is in proper form, and bears the requisite number of signatures of qualified petitioners, the commissioners shall by resolution call for a public hearing on the dissolution of such transportation district. If such petition is found by the commissioners to be lacking in the number of signatures, the commissioners shall declare the petition void.

(2) A notice of such hearing shall be published in a newspaper having general circulation in the transportation district, once each week for at least two (2) weeks, the last publication to be at least two (2) weeks before the hearing. If there is no newspaper having general circulation in the district, the notice of the hearing shall be posted in at least three (3) public places in the district for two (2) weeks before the hearing. The notice shall state the time, date, place and purpose of the hearing.

(3) If upon such hearing the commissioners find that the district is not indebted beyond funds immediately available to extinguish all of its debts and obligations and that there is good reason for the dissolution of such district, the commissioners shall enter upon their minutes an order dissolving such district. Such order shall be filed, of record, and the dissolution shall be effective for all purposes six (6) months after the date of filing the order of dissolution, provided that at or before such time the board of said district certifies to the county commissioners that all debts and obligations of the district have been paid, discharged or irrevocably settled, together with proof thereof. Any assets of the district remaining after all debts and obligations of the district have been paid, discharged or irrevocably settled, shall be evenly divided between the county and any cities within or partially within the dissolved district.



**History:** En. 11-4512 by Sec. 12, Ch. 355, L. 1975.

vided the act should be in effect from and after its passage and approval. Approved April 9, 1975.

**Effective Date**

Section 13 of Ch. 355, Laws 1975 pro-

**11-4513. Aid for public transportation—allocation formula—highway purposes.** (1) The department of intergovernmental relations shall allocate each year one-half ( $\frac{1}{2}$ ) of the funds appropriated for the purposes of this section among the cities of the state which operate, or contract for the operation of, public bus or other public transportation system. A city is eligible for an allocation based upon the amount of the operating deficit of the system, as follows: the proportion of the operating deficits of all municipal public transportation systems in the state represented by the operating deficit of the applicant city, multiplied by the rate of system usage based on bus passengers per mile in the applicant city, where full usage of the system would have a value of one (1). Each applicant city shall compute its operating deficit and rate of usage for a fiscal year immediately following the end of such year, and shall apply allocations received against that deficit. One-half ( $\frac{1}{2}$ ) of the funds appropriated for the purposes of section 11-4513 shall be paid by the state treasurer to the counties of the state in the manner provided in section 84-1840(1)(a). Moneys distributed to counties under section 11-4513 shall be used by the counties for highway or other transportation purposes. The department of intergovernmental relations may make rules for the keeping of accounts for, and otherwise implementing, this section.

(2) A city may not receive more than fifty per cent (50%) of any year's operating deficit as an allocation under this section.

**History:** En. 11-4513 by Sec. 1, Ch. 515, L. 1975.

**Compiler's Notes**

The department of intergovernmental relations referred to in this section was renamed the department of community affairs by Sec. 1, Ch. 213, Laws of 1975, amending sec. 82A-901.

**Title of Act**

An act authorizing the department of intergovernmental relations to reimburse a city up to half the operating deficit of a public transportation system, providing

for allocation of appropriated moneys to the counties for transportation purposes, declaring such expenditure to be for highway purposes, and appropriating \$300,000 from the earmarked revenue fund highway account for the purposes of this act.

**Appropriation**

Section 2 of Ch. 515, Laws 1975 read "There is appropriated three hundred thousand dollars (\$300,000) from the earmarked revenue fund, highway account, for the biennium ending June 30, 1977, to be allocated for the purposes of section 11-4513."

















# REVISED CODES OF MONTANA

## VOLUME 2

### Part 1

### 1977 Cumulative Supplement

#### *Containing*

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE  
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF  
REPLACEMENT VOLUME 2 (PART 1) OF  
THE 1947 REVISED CODES

#### AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 2  
(PART 1) THROUGH VOLUME 557, PACIFIC  
REPORTER (2ND SERIES)

#### *Edited by*

THE PUBLISHERS' EDITORIAL STAFF

THE ALLEN SMITH COMPANY

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Indianapolis, Indiana 46202



# REVISED CODES OF MONTANA

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# MONTANA REVISED CODES

## TITLE 12—CODES AND LAWS

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### CHAPTER 2—THE ENACTMENT, EFFECT, ARRANGEMENT AND CODIFICATION AUTHORIZED

#### Section

- 12-216. Reference to other titles, chapters, or sections.  
12-217. "Man" and "men" to include women.

#### 12-201. (3) Laws, when retroactive.

##### Subsequently Enacted Legislation

Enactment providing that new highways shall not be constructed to bypass municipality without its consent would not be enforced in favor of nonconsenting municipality where state highway commission had acquired rights and obligations

and begun construction of bypass prior to enactment and where enactment did not expressly declare legislative intent to apply statute retroactively. *City of Harlem v. State Highway Comm.*, 149 M 281, 425 P 2d 718.

**12-216. Reference to other titles, chapters, or sections.** A statute which refers to a title, chapter, or section number without further identification or attribution shall be presumed, unless the context clearly indicates otherwise, to refer to a title, chapter, or section of the Revised Codes of Montana, 1947.

**History:** En. Sec. 1, Ch. 4, L. 1975; amd. Sec. 1, Ch. 309, L. 1977.

##### Compiler's Notes

Section 61, Ch. 535, L. 1975, enacted a section designated sec. 12-216, which was redesignated sec. 12-217 by the compiler to avoid confusion with this section.

##### Title of Act

An act providing that citation of "R. C. M. 1947" is not necessary in order to refer to the Revised Codes of Montana.

##### Amendments

The 1977 amendment substituted "A statute" for "A title, chapter or statute"; substituted "a title, chapter, or section number" for "a section number"; and made a minor change in punctuation.

**12-217. "Man" and "men" to include women.** Wherever the word man or men or a word which includes the syllable "man" or "men" in combination with other syllables, such as "workman" appears in this code, such word or syllable shall be deemed to include "woman" or "women" unless the context clearly indicates a contrary intent and unless the subject matter of the statute relates clearly and necessarily to the male sex only.

**History:** En. 12-216 by Sec. 61, Ch. 535, L. 1975.

### Compiler's Notes

This section as enacted was designated sec. 12-216, but was redesignated as sec. 12-217 by the compiler to avoid confusion with a section enacted by Sec. 1, Ch. 4, L. 1975 and also designated as sec. 12-216.

### Title of Act

An act to generally revise certain statutes which discriminate on the basis of sex in order to remove the discrimination;

amending sections 11-802, 11-1821, 11-1911, 11-1915, 11-1927, 11-1928, 11-2025, 11-3112, 11-3215, 16-2702, 17-504, 17-807, 23-4727, 23-4728, 35-409, 39-108, 39-109, 39-113, 40-3312, 40-4902, 40-5305, 41-1119, 41-1506, 45-511, 45-603, 45-808, 59-519, 63-107, 63-402, 64-209, 67-903, 67-904, 67-1603, 71-120, 71-2202, 72-617, 72-618, 75-8701, 77-501, 80-1801, 80-1803, 84-301, 84-3206, 91-1304, 92-707, 92-1303, 92-1321, 93-2803, 93-2804, 93-2807, 93-2808, 93-2809, 93-4207, 93-4707, 93-5834, 93-5836, 93-6711, 93-9706, 93-100-2, 95-609, R. C. M. 1947; and creating a new section 12-216, R. C. M. 1947.

## CHAPTER 3—REVISED CODES OF MONTANA, 1947, CODIFICATION AUTHORIZED

### Section

- 12-345. Adoption of Replacement Volume One, Part 2, and Replacement Volume Two, Parts 1 and 2.  
12-346. Omissions—inaccuracies—effect.  
12-347. Adoption of Replacement Volume Four, Part 1, and Replacement Volume Eight.  
12-348. Omissions—inaccuracies—effect.  
12-349. Adoption of Second Replacement Volume 4, Part 2.  
12-350. Omissions—inaccuracies—effect.

## 12-301 to 12-329. Repealed.

### Repeal

Sections 12-301 to 12-329 (Secs. 1 to 9, Ch. 184, L. 1945; Secs. 1 to 8, Ch. 43, L. 1947; Secs. 1, 2, Ch. 50, L. 1947; Secs. 1 to 9, Ch. 266, L. 1947; Sec. 1, Ch. 75, L.

1951), relating to the Montana code commissioner and advisory board, and the form, contents, publication and distribution of the code, were repealed by Sec. 11, Ch. 419, Laws 1975.

## 12-331 to 12-332.1. Repealed.

### Repeal

Sections 12-331 to 12-332.1 (Secs. 2, 3, Ch. 4, L. 1951; Sec. 1, Ch. 304, L. 1967), relating to changes in code language or

arrangement, omissions and inaccuracies in the code, and control of code supplements and replacement volumes, were repealed by Sec. 11, Ch. 419, Laws 1975.

**12-345. Adoption of Replacement Volume One, Part 2, and Replacement Volume Two, Parts 1 and 2.** The Second Replacement of Part 2 of Volume Number 1 and Replacement Volume Number 2 (in two parts) of the Revised Codes of Montana, 1947, as published by the publishers and distributors of said Revised Codes of Montana, 1947, are hereby, as to both form and substance, approved, legalized and adopted as prima facie the laws of Montana now in force and effect with respect to the title and subjects covered thereby. The sections of said replacement volumes may be cited as sections of the Revised Codes of Montana, 1947, without reference to the session laws which enacted new matter or to the session laws which have amended the sections of the Revised Codes of Montana, 1947, as included in the original compilation of the Revised Codes of Montana, 1947.

**History:** En. Sec. 1, Ch. 8, L. 1969.

### Title of Act

An act to approve and legalize and adopt as prima facie the laws of Montana the Second Replacement of Part 2 of

Volume Number 1 and Replacement Volume Number 2 (in two parts) of the Revised Codes of Montana, 1947, as published by the publishers and distributors of said codes.



**12-346. Omissions — inaccuracies — effect.** Nothing herein contained shall be deemed as invalidating or in any manner affecting the legality of any act or thing heretofore or hereafter done by authority of any enactment which is not included in said replacement volumes and nothing herein contained shall affect the existence, validity, or enforcement of any act, enactment, or title thereof, statute, or code section, omitted from or erroneously, or incorrectly set forth in said replacement volumes.

**History:** En. Sec. 2, Ch. 8, L. 1969.

the act should be in effect from and after its passage and approval. Approved January 29, 1969.

**Effective Date**

Section 3 of Ch. 8, Laws 1969 provided

**12-347. Adoption of Replacement Volume Four, Part 1, and Replacement Volume Eight.** The Second Replacement of Part 1 of Volume Number 4 and Replacement Volume Number 8 of the R.C.M. 1947, as published by the publishers and distributors of said R.C.M. 1947, are hereby, as to both form and substance, approved, legalized and adopted as prima facie the laws of Montana now in force and effect with respect to the titles and subjects covered thereby. The sections of said replacement volumes may be cited as sections of the R.C.M. 1947, without reference to the session laws which enacted new matter or to the session laws which have amended the sections of the R.C.M. 1947, as included in the original compilation of the R.C.M. 1947.

**History:** En. Sec. 1, Ch. 207, L. 1971.

the second replacement of Part 1 of Volume Number 4 and Replacement Volume Number 6 of the R.C.M. 1947, as published by the publishers and distributors of said codes; and providing an effective date.

**Title of Act**

An act to approve and legalize and adopt as prima facie the laws of Montana

**12-348. Omissions — inaccuracies — effect.** Nothing herein contained shall be deemed as invalidating or in any manner affecting the legality of any act or thing heretofore or hereafter done by authority of any enactment which is not included in said replacement volumes and nothing herein contained shall affect the existence, validity, or enforcement of any act, enactment, or title thereof, statute, or code section, omitted from or erroneously, or incorrectly set forth in said replacement volumes.

**History:** En. Sec. 2, Ch. 207, L. 1971.

the act should be in effect from and after its passage and approval. Approved March 4, 1971.

**Effective Date**

Section 3 of Ch. 207, Laws 1971 provided

**12-349. Adoption of Second Replacement Volume 4, Part 2.** The Second Replacement of Part 2 of Volume Number 4 of the Revised Codes of Montana, 1947, as published by the publishers and distributors of said Revised Codes of Montana, 1947, is hereby, as to both form and substance, approved, legalized and adopted as prima facie the laws of Montana now in force and effect with respect to the title and subjects covered thereby. The sections of said replacement volumes may be cited as sections of the Revised Codes of Montana, 1947, without reference to the session laws which enacted new matter or to the session laws which have amended the sections of the Revised Codes of Montana, 1947, as included in the original compilation of the Revised Codes of Montana, 1947.

**History:** En. Sec. 1, Ch. 143, L. 1973.

**Title of Act**

An act to approve and legalize and adopt as prima facie the laws of Montana

the second replacement of Part 2 of Volume Number 4 of the Revised Codes of Montana, 1947, as published by the publishers and distributors of said codes; and providing an effective date.

**12-350. Omissions—inaccuracies—effect.** Nothing herein contained shall be deemed as invalidating or in any manner affecting the legality of any act or thing heretofore or hereafter done by authority of any enactment which is not included in said replacement volumes and nothing herein contained shall affect the existence, validity or enforcement of any act, enactment, or title thereof, statute, or code section omitted from or erroneously or incorrectly set forth in said replacement volumes.

**History:** En. Sec. 2, Ch. 143, L. 1973.

**Effective Date**

Section 3 of Ch. 143, Laws 1973 pro-

vided the act should be in effect from and after its passage and approval. Approved March 5, 1973.

## CHAPTER 4—COMMISSION ON UNIFORM STATE LAWS

### Section

12-402. Appointments to fill vacancies.

12-404. Duties of commissioners.

### 12-401. Appointment of commission on uniform state laws.

**NOTE.**—Uniform State Law. In addition to the states listed in the parent volume, the following states have adopted the

“Model Act to Provide for the Appointment of Commissioners”: Kentucky.

**12-402. Appointments to fill vacancies.** If an appointed commissioner dies, resigns, or fails or refuses to serve, his office becomes vacant. The governor shall appoint a qualified person to fill the vacancy for the unexpired term.

**History:** En. Sec. 2, Ch. 175, L. 1945; amd. Sec. 2, Ch. 309, L. 1977.

### Amendments

The 1977 amendment substituted “appoint a qualified person” in the second sentence for “make an appointment”; and made minor changes in phraseology.

**12-404. Duties of commissioners.** Each commissioner shall attend the meeting of the national conference of commissioners on uniform state laws, and both in and out of such national conference shall do all in his power to promote uniformity in state laws, upon all subjects where uniformity may be deemed desirable and practicable; said commission shall report as provided in section 2 [82-4002] of this act. It shall also be the duty of said commission to bring about as far as practicable the uniform judicial interpretation of all uniform laws.

**History:** En. Sec. 4, Ch. 175, L. 1945; amd. Sec. 8, Ch. 93, L. 1969.

### Amendments

The 1969 amendment substituted the reference to the reporting requirements of

section 82-4002 for a former provision requiring a report on the commission's transactions and its advice and recommendations to be made to the legislature at each regular session.

CHAPTER 5—RECODIFICATION OF REVISED CODES OF MONTANA, 1947

Section

- 12-501. Definitions.
- 12-502. Code commissioner office created.
- 12-503. Code commissioner qualifications.
- 12-504. Name of recodification.
- 12-505. Code commissioner duties.
- 12-505.1. Notice of effective date.
- 12-506. Effect of Montana Code Annotated.
- 12-507. Publications.
- 12-508. Copyright—ownership.
- 12-509. Deposit of code—certification.
- 12-510. Format as approved by legislative council.

**12-501. Definitions.** As used in this act the following definitions apply:

(1) “Code” or “codes” means the Revised Codes of Montana, 1947, the pocket supplements thereto, and the replacement volumes.

(2) “Recodify” means to compile, arrange, rearrange, and prepare for publication. It includes, without changing the meaning, effect, or intent of any law:

(a) correcting or changing punctuation, capitalization, spelling, grammatical construction, and numbering as required by uniform literary and bill drafting practice;

(b) substituting the appropriate new code division reference for reference to a section of, to a part of, or to an entire “act”;

(c) substituting calendar date for “effective date”, “hereafter”, and similar terms;

(d) creating new titles, chapters, parts, sections, or other divisions of the code;

(e) changing or inserting language made necessary because of rearrangement;

(f) eliminating redundant words;

(g) when given direction or authority by another statute, correcting inaccurate or obsolete references to:

(i) titles of officers or agencies, such as those changed by executive reorganization statutes;

(ii) other code sections, such as those which have been repealed or repealed and replaced;

(h) changing inaccurate terminology to comply with statutory definitions or short form amendments, such as those found in 19-122 or 93-411;

(i) whether originally written by the legislature or by the code publisher, changing or creating section captions (catch lines) to clearly reflect the content of the section.

**History:** En. 12-501 by Sec. 1, Ch. 419, L. 1975; amd. Sec. 1, Ch. 1, L. 1977.

12-329, 12-331, 12-332, and 12-332.1, R. C. M. 1947, and providing an effective date.

**Title of Act**

An act creating the office of code commissioner to supervise the recodification of the Revised Codes of Montana 1947, to provide for recodification on a continuing basis; repealing sections 12-301 through

**Amendments**

The 1977 amendment inserted “the following definitions apply” near the beginning of the section; inserted “‘Code’ or” at the beginning of subdivision (1); substituted “correcting or changing” at the



beginning of subdivision (2)(a) for "adopting a uniform system of"; inserted "spelling, grammatical construction" in subdivision (2)(a); added "as required by uniform literary and bill drafting practice" to subdivision (2)(a); substituted "new code division" in subdivision (2)(b) for "code section"; substituted "to a section of, to a part of, or to an entire 'act'" in subdivision (2)(b) for "to a section of an 'act'"; added "hereafter," and similar terms" to subdivision (2)(c); inserted "parts" in subdivision (2)(d); added subdivisions (2)(e) to (2)(i); and made minor changes in punctuation.

**12-502. Code commissioner office created.** There is created within the legal services division of the legislative council the office of code commissioner.

History: En. 12-502 by Sec. 2, Ch. 419, L. 1975.

**12-503. Code commissioner qualifications.** To be eligible to be code commissioner a person must be licensed to practice law in Montana for at least five (5) years and demonstrate a knowledge of code arranging and recodification procedures.

History: En. 12-503 by Sec. 3, Ch. 419, L. 1975.

**12-504. Name of recodification.** The recodification shall be known as the "Montana Code Annotated."

History: En. 12-504 by Sec. 4, Ch. 419, L. 1975.

**12-505. Code commissioner duties.** (1) The code commissioner is subject to the general supervision and policy of the legislative council.

(2) Prior to January 1, 1979, the code commissioner shall recodify all the laws of a general and permanent nature appearing in the codes and session laws and prepare them for publication;

(3) Prior to January 1, 1979, the commissioner shall prepare and submit to the legislature a report which is certified by the commissioner as the "Official Report of the Montana Code Commissioner", together with a bill enacting the Montana Code Annotated. A copy of the report and bill shall be deposited with the secretary of state. The report shall explain and indicate, in tabular or other form, all changes made during recodification, other than punctuation and capitalization, to clearly indicate the character of each change;

(4) Prior to November 1, 1976, and prior to November 1 of each year thereafter, the commissioner shall prepare and submit to the legislative council a report, in tabular or other form, indicating the commissioner's recommendations for legislation which will:

- (a) eliminate archaic or outdated laws;
- (b) eliminate obsolete or redundant wording of laws;
- (c) eliminate any duplications in law and any laws repealed directly or by implication;
- (d) clarify existing laws;
- (e) correct errors and inconsistencies within the laws.

(5) The commissioner shall cause to be prepared for publication with the Montana Code Annotated the following material:

- (a) Statutory history of each code section;
  - (b) Annotations of state and federal court decisions relating to the subject matter of the code;
  - (c) Such editorial notes, cross-references, and other matter as the commissioner considers desirable or advantageous;
  - (d) The Declaration of Independence;
  - (e) The Constitution of the United States of America and amendments thereto;
  - (f) Acts of congress relating to the authentication of laws and records;
  - (g) The Organic Act of the Territory of Montana;
  - (h) The Enabling Act;
  - (i) The 1972 Constitution of the state of Montana and any amendments thereto;
  - (j) The Ordinances relating to federal relations and elections;
  - (k) Rules of civil, criminal, and appellate procedure and such other rules of procedure as the Montana supreme court may adopt; and
  - (l) A complete subject index, a popular name index, and comparative disposition tables or cross reference indexes relating sections of the Montana Code Annotated to prior compilations and session laws.
- (6) After publication of the Montana Code Annotated the code commissioner shall:

- (a) annotate, arrange, and prepare for publication all laws of a general and permanent nature enacted at each legislative session and assign catch lines and code section numbers to each new section;
- (b) continue to codify, index, arrange, rearrange, and generally update the Montana Code Annotated to maintain an orderly and logical arrangement of the laws in order to avoid future need for bulk revision;
- (c) prepare and submit to each legislature a report which is certified as the "Official Report of the Montana Code Commissioner—(year)" which indicates, in tabular or other form, all changes made during the continuous recodification, other than punctuation and capitalization, to clearly indicate the character of each change made since the first publication of the Montana Code Annotated.

(7) From time to time the commissioner shall confer with members of the judiciary and the state bar relative to recodification procedures.

**History:** En. 12-505 by Sec. 5, Ch. 419, L. 1975; amd. Sec. 2, Ch. 1, L. 1977.

#### Amendments

The 1977 amendment designated the former opening clause as subsection (1); redesignated former subdivisions (1) to (4) as subsections (2) to (5); deleted a former subdivision (3)(f) which read "correct, inaccurate references to titles of officers or agencies or to other statutes as may be necessary to obtain consistency with current law"; combined the opening

clauses of former subdivisions (4) and (5) as the opening clause of subsection (5); deleted a former subdivision (5)(a) which read "Magna Charta"; redesignated former subdivisions (5)(b) to (5)(j) as subdivisions (d) to (l) of subsection (5); substituted "1972 Constitution" for "1889 and 1972 constitutions" in subdivision (5)(i); deleted "divisions" after "rearrange" in subdivision (6)(b); and made minor changes in phraseology, punctuation and style.

**12-505.1. Notice of effective date.** Within 10 days after the bill enacting the Montana Code Annotated becomes effective, the secretary of state shall publish a notice thereof once in a newspaper of general circulation in each judicial district within the state, specifying in the notice the effective date of the code and the cost of a copy of the code.

**History:** En. 12-505.1 by Sec. 3, Ch. 1, Montana, 1947; amending sections 12-501, L. 1977. 12-505, 12-506, 12-507, 12-509, and 12-510, R. C. M. 1947; and providing an immediate effective date.

**Title of Act**

An act to amend the laws relating to the recodification of the Revised Codes of

**12-506. Effect of Montana Code Annotated.** (1) The Montana Code Annotated shall be enacted as a reenactment of the Revised Codes of Montana, 1947, and the supplements thereto.

(2) The enactment of the Montana Code Annotated shall not:

(a) revive a law repealed or superseded before the effective date of the Montana Code Annotated;

(b) affect an act done, right accrued, or obligation incurred or imposed by law prior to the effective date of the Montana Code Annotated;

(c) affect any action, suit, or proceeding pending on such effective date;

(d) repeal statutes of a nongeneral, nonpermanent nature such as severability, construction, validating, repealing, or similar statutes omitted from the Montana Code Annotated.

(3) The Montana Code Annotated shall be given effect as a continuation of the Revised Codes of Montana and not as a new enactment. A defect in title of any act set out in prior laws and reenacted by the Montana Code Annotated is cured by such enactment.

(4) No implication or presumption of legislative construction is to be drawn from the classification or arrangement of the Montana Code Annotated.

(5) Unless specifically adopted as such by the legislature, annotations, code commissioner notes, catch lines, or other editorial material included in the Montana Code Annotated may not be construed as part of the legislative text but are only for the purpose of convenience, orderly arrangement, and information.

(6) In case of any inconsistency in meaning arising through omission or otherwise between the provisions of the Montana Code Annotated and the corresponding portion of the official enrolled bill on file with the secretary of state, effect shall be given to the official enrolled bill.

**History:** En. 12-506 by Sec. 6, Ch. 419, L. 1975; amd. Sec. 4, Ch. 1, L. 1977.

**Amendments**

The 1977 amendment deleted "a repeal and" in subsection (1) before "a reenactment"; deleted a former subdivision (2) (a) which read "repeal all statutes and parts of statutes of a general and permanent nature not contained in the Montana Code Annotated"; redesignated former

subdivisions (2)(b) to (2)(d) as (2)(a) to (2)(c); inserted subdivision (2)(d); inserted "Unless specifically adopted as such by the legislature" at the beginning of subsection (5); substituted "catch lines or other editorial material included in" in subsection (5) for "and other editorial material"; added subsection (6); and made minor changes in phraseology and style.



**12-507. Publications.** (1) The legislative council with the advice of the code commissioner shall decide on the quantity, quality, style, format, and grade of all publications prior to having the department of administration contract for their publication.

(2) The methods of sale to the public of the Montana Code Annotated and supplements or other subsequent and ancillary publications thereto may be included as an alternative specification and bid and as a part of a contract to be let by bids by the department of administration.

(3) The sales price to the public shall be fixed by the legislative council but shall not exceed the cost price plus 20%. All revenues generated from the sale to the public of the Montana Code Annotated shall be remitted to the state treasurer for the purpose of reimbursing the general fund for appropriations made for the use of the office and facilities of the legislative council under this act.

(4) Sets of the Montana Code Annotated purchased by the state or local governmental agencies that are supported by public funds shall be for the cost price of the sets.

**History:** En. 12-507 by Sec. 7, Ch. 419, L. 1975; amd. Sec. 5, Ch. 1, L. 1977.

ported by public funds" in subsection (4) for "and its political subdivisions"; and made minor changes in punctuation and style.

**Amendments**

The 1977 amendment substituted "or local governmental agencies that are sup-

**12-508. Copyright—ownership.** The Montana Code Annotated, supplements, or other publications ancillary thereto, as published, shall be the sole property of the state of Montana and shall be copyrighted for and in behalf of the state of Montana by the secretary of state.

**History:** En. 12-508 by Sec. 8, Ch. 419, L. 1975.

**12-509. Deposit of code—certification.** (1) Upon completion of the printing and binding of the Montana Code Annotated, the code commissioner shall deposit a complete set with the secretary of state, along with a certification that the set comprises the Montana Code Annotated as authorized by this act and enacted by the legislature.

(2) Within 10 days after that deposit, the secretary of state shall publish a notice thereof once in a newspaper of general circulation in each judicial district within the state, specifying in the notice the date on which the Montana Code Annotated became effective, how the code may be purchased, and the cost thereof.

(3) The secretary of state or the code commissioner may further publicize the effective date of the Montana Code Annotated to the extent considered necessary or desirable by the commissioner.

**History:** En. 12-509 by Sec. 9, Ch. 419, L. 1975; amd. Sec. 6, Ch. 1, L. 1977.

**Amendments**

The 1977 amendment added "how the code may be purchased, and the cost thereof" to subsection (2); and made minor changes in style and punctuation.

**12-510. Format as approved by legislative council.** (1) The publication of updates to the Montana Code Annotated may be as a cumulative supplement, replacement volume, or in any other format approved by the legislative council.

(2) The supplements or replacements shall be certified and reported to the legislature by the legislative council; approved and enacted by the legislature as prima facie the official laws of Montana; published, copyrighted, and deposited with the secretary of state; and referred to as the Montana Code Annotated. The supplements and replacements shall become effective on the date deposited with and certified to the secretary of state.

(3) The legislative council may issue such supplementary and ancillary publications as it considers necessary or desirable in aid of the general use and purposes of the Montana Code Annotated and the supplements or replacements thereto.

**History:** En. 12-510 by Sec. 10, Ch. 419, L. 1975; amd. Sec. 7, Ch. 1, L. 1977.

#### **Amendments**

The 1977 amendment inserted "prima facie" in the first sentence of subsection (2); and made minor changes in phraseology and punctuation.

#### **Repealing Clause**

Section 11 of Ch. 419, Laws 1975 read "Sections 12-301 through 12-329, 12-331, 12-332, and 12-332.1 are repealed."

#### **Effective Dates**

Section 12 of Ch. 419, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved April 14, 1975.

Section 8 of Ch. 1, Laws 1977 provided the act should be in effect on its passage and approval. Approved February 5, 1977.

## TITLE 13—CONTRACTS

### Chapter

#### 8. Unlawful contracts, 13-812.

### CHAPTER 2—PARTIES TO CONTRACT

#### 13-204. (7472) When contract for benefit of third person, etc.

##### Employment Contract

Employee was not third-party beneficiary, within the meaning of statute, of contract between his employer and United States providing that employer should at all times be fully responsible for and exercise reasonable precaution for health and safety of his employees engaged in

performance of work under contract; hence employee was not entitled to maintain action for employer's breach of safety clauses in the absence of express promise in contract to pay damages in addition to employee's rights to workmen's compensation. *Hensley v. United States*, 279 F Supp 548.

### CHAPTER 3—CONSENT

#### 13-305. (7477) Duress—in what it consists.

##### Detention of Property

Where defendants' allegations amounted to nothing more than a statement of their economic distress at time they executed notes to plaintiffs, there was no allegation of unlawful detention of property, as re-

quired by statute, therefore defense of economic duress was clearly susceptible to summary judgment in favor of plaintiffs. *Double X Ranch, Inc. v. Savage Brothers*, — M —, 536 P 2d 1176.

#### 13-308. (7480) Actual fraud, acts constituting.

##### Material Misrepresentations

Broker's statement that laundromat grossed \$3,000 a month, was worth \$37,000, and "looks like a real good deal" did not establish material misrepresentations constituting fraud and entitling purchaser to rescind sale contract, in view of evidence that, although open less than thirty days a month, business did gross \$100 a day and that seller had paid \$30,000 for business and added \$4,000 of improvements; in the absence of corroboration, buyer's claim that broker also told him business netted \$1,000 a month was not basis for rescission. *Young v. Handrow*, 151 M 310, 443 P 2d 9.

Inaccurate statement by defendant's agent in mineral deed negotiations that nearest oil fields were 20 miles away did not constitute fraud under this section in the absence of fraudulent intent and where the misstatement arose from an honest misunderstanding between defendant and agent. *Clough v. Jackson*, 156 M 272, 479 P 2d 266.

##### One Party in Superior Position

Record disclosing that buyer of real estate who was real estate broker and mineral dealer, knowledgeable in legal affairs, titles and values of property and

who handled drafting of contract, was in superior position as compared to seller who was almost illiterate, weak-minded and an irresponsible drinker, and who took no part in drafting contract, was sufficient to raise legal question of fraud on grounds of gross inadequacy of consideration and undue influence. *Rock v. Birdwell*, 149 M 449, 429 P 2d 634.

##### Promise Must Be Made Without the Intent To Perform

Allegation that executive vice-president of bank promised to find purchaser for defendant's corporation did not support claim of fraud under this section since mere making of promise which promisor fails to keep is not actionable fraud. *Galatin Trust & Savings Bank v. Henke*, 154 M 170, 461 P 2d 448.

##### Tort Liability

The making of representations to induce a contract imposes on the person making them a duty to act in good faith, and, if the representations are fraudulent, the party to whom they were made has an action in tort for fraud and deceit independent of the contract, which he may choose to affirm though he need not. *State ex rel. Dimler v. District Court*, — M —, 550 P 2d 917.



**13-309. (7481) Constructive fraud.****Concealment of Facts**

Restaurant owner's withholding from potential buyers of information that she had received warning from state board of health concerning unsatisfactory condition of water supply and sewage disposal systems and that correction of difficulty was necessary to meet board's standards was fraudulent, the concealment being in the nature of a constructive fraud. *Russell v. Russell*, 152 M 461, 452 P 2d 77.

**Deed from Mother to Son**

Constructive trust would not be imposed on lands deeded son by aged mother in absence of evidence to show that son gained land by accident, mistake, undue influence, violation of trust or other wrongful act or by constructive fraud as defined in statute. *Bodine v. Bodine*, 149 M 29, 422 P 2d 650.

**Deficiency in Amount of Land Sold**

Sale of land later shown to consist of fewer acres than represented constituted

constructive fraud entitling buyer to rescission or damages under statute even though buyer, experienced in real estate transactions, failed to ascertain the true number of acres, and even though the seller's representations were honest mistake, not intended to deceive anyone. *Hardin v. Hill*, 149 M 68, 423 P 2d 309.

**Failure To Read Deed Carefully**

Where plaintiff's principal reason for wishing to rescind mineral deed was her mistaken belief that she had granted a royalty interest, evidence that plaintiff was astute in negotiations and that consideration for the deed was fair and adequate, but that plaintiff failed to read carefully the instrument she signed did not establish constructive fraud under this section. *Clough v. Jackson*, 156 M 272, 479 P 2d 266.

**13-311. (7483) Undue influence—in what it consists.****Testimony of Attorney**

Although testatrix was 85 and had infirmities associated with old age at the time her will was executed, testimony of her attorney, that due to her age and failing eyesight and her desire to make unequal distribution of her property he had made a special effort to assure himself of her competence before preparing her will and deeds, was sufficient to overcome allegations of contestants. *Blackmer v. Blackmer*, — M —, 525 P 2d 559.

**What Constitutes Undue Influence**

Where plaintiff's principal reason for wishing to rescind mineral deed was her mistaken belief that she had granted a royalty interest, evidence that plaintiff was astute in negotiations and that consideration for the deed was fair and adequate, but that plaintiff failed to read carefully the instrument she signed did not establish undue influence under this section. *Clough v. Jackson*, 156 M 272, 479 P 2d 266.

**CHAPTER 4—OBJECT****13-402. (7499) Requisites of object.****Lack of Certainty**

Pre-emptive agreement or first refusal option, stating "buyers to have first refusal on any additional tracts seller may

offer," was not sufficiently certain to be enforceable against seller who owned land in several different locations. *Klein v. Brodie*, — M —, 534 P 2d 1251.

**CHAPTER 5—CONSIDERATION****13-507. (7509) How ascertained.****Proof of Reasonable Worth**

Submission of time cards of all employees for the period that repairs were being made did not constitute proof of reasonable worth of an oral contract to repair a crane. *Holland Constr. Co. v. Lampson*, — M —, 528 P 2d 1327.

**Reasonable Consideration**

The burden was upon the plaintiff to justify the total number of hours required to repair a crane, and where it had taken an unreasonable time to complete the work, plaintiff was entitled to be compensated for only such time as would reasonably have been required to do the work. *Holland Constr. Co. v. Lampson*, — M —, 528 P 2d 1327.

**13-509. (7511) Effect of impossibility of ascertaining, etc.****Escalator Clause**

Clause in timber contract, stating without explanation, "Timber price will be escalated [sic] each year," had a positive and definite meaning in the vicinity where

the contract was made, and was not so ambiguous as to prevent enforcement of the contract. *Pegg v. Mid-State Development Corp.*, — M —, 529 P 2d 1399.

## CHAPTER 6—CREATION OF CONTRACTS—ORAL AND WRITTEN

**13-603. (7516) Implied contract defined.****Service Contract**

Evidence that it was understood plaintiff should be paid for her services and that plaintiff maintained a detailed record of services and expenses, even though in-

cluding contrary indications, was sufficient under this section to support plaintiff's claim under an implied contract. *Cartwright v. Joyce*, 155 M 478, 473 P 2d 515.

**13-606. (7519) What contracts must be in writing.****Contract for Sale of Real Estate**

Where issue was whether defendant was realtor and had listed property for sale, summary judgment for plaintiff was proper when defendant could produce no written document establishing such facts. *Pack River Co. v. Young*, — M —, 511 P 2d 12.

**Estoppel**

Promisor was estopped from raising statute of frauds as defense to action by promisee under oral agreement to divide equally income received from soil bank payments for eight-year period in view of evidence showing glaring inconsistencies in promisor's position. *Daley v. Daley*, 150 M 432, 436 P 2d 88.

**Extension of Contract Period**

Where employer had been awarded construction contract to be completed in 360 days and hired employee under oral agreement almost immediately thereafter, fact that contract was later amended resulting in an extension of time to correct construction error did not make it invalid under this section, and therefore did not affect employee's right to recover salary upon being fired, since extension of time was not contemplated in the original contract; fact that employee had worked seven weeks also removed contract from bar of statute under doctrine of part performance. *Fox v. Fifth West, Inc.*, 153 M 95, 454 P 2d 612.

**Full Performance by One Party**

Oral contract extending for more than one year was taken out of the operation of this section by full performance by

one party. *Davis v. Davis*, 159 M 355, 497 P 2d 315.

**Option Agreement**

Evidence of payment of money pursuant to the purchase of real estate for the purpose of persuading seller to hold the deal open for a certain period of time, and the subsequent actions of the seller in holding the property off the market, were sufficient to establish a valid option agreement, as well as to show that the agreement had been fully performed. *Lynch v. Shields*, — M —, 529 P 2d 348.

**Sale of Stock**

In action for breach of contract trial court improperly refused to direct verdict for defendant seller since oral contract for sale of stock in ranch corporation was invalid under this section and equitable estoppel was not applicable since there was no language amounting to representation or concealment of material facts by seller. *Mueller v. Svejksky*, 153 M 416, 458 P 2d 265.

**Subsequent Oral Modification**

Even if corporate minutes and subsequent listing agreement constituted written agreement to pay director commission on sale of corporation's real and personal property, alleged oral modification to permit sale to different buyer at lesser price was barred by this section; contract was not removed from bar of statute as an executed oral agreement under section 13-907. *Hart v. Billings Public Stockyards*, 157 M 345, 486 P 2d 120.

**13-607. (7520) Effect of written contracts.****Parol Evidence Not Allowed**

Trial court's finding based upon oral testimony admitted at trial was error since such oral testimony varied terms of writ-

ten contract and was thus inadmissible under this section. *Davison v. Casebolt*, 154 M 125, 461 P 2d 2.



In cattle-raising venture oral agreement between partnership and defendant that subsequent written contract would be modified when experience showed that each would profit by the change did not alter the terms of the written agreement under the rule of construction of this section. *Heekman and Shell v. Wilson*, 158 M 47, 487 P 2d 1141.

Contract between husband and wife for payment of \$10,000 in purchase of partnership interest, which stated that the parties released each other from any further liability, was not ambiguous, and could not be varied by parol evidence. *Merritt v. Merritt*, — M —, 526 P 2d 1375.

## CHAPTER 7—INTERPRETATION OF CONTRACTS

### 13-702. (7527) Contracts—how to be interpreted.

#### Intention of Parties

Restrictive covenant giving lessee exclusive right to operate drugstore did not extend to property beyond the plot described in the lease and summary judgment for lessor was properly granted because the intent of the parties at the time

they entered into the agreement was reduced to writing and expressed in clear and explicit language that the exclusive covenant applied to "the entire premises covered by the plans and specifications." *Matteucci's Super Save, Drug v. Hustad Corp.*, 158 M 311, 491 P 2d 705.

### 13-704. (7529) Intention to be ascertained from language.

#### Insurance Contract

Inability of insurer to write malpractice insurance in state and fact that insured carried malpractice insurance with another company could not be considered in determining intentions of parties to comprehensive liability insurance policy, since policy was unambiguous. *Home Ins. Co. v. Pinski Bros.*, 156 M 246, 479 P 2d 274.

Even though auto dealer remained record owner of automobile after its sale, by his failure to send proper certificates to registrar of motor vehicles, dealer's liability insurance policy, which was limited in its coverage by clear and explicit language, did not insure motorist who had purchased vehicle. *Universal Underwriters Ins. Co. v. State Farm Mutual Auto Ins. Co.*, — M —, 531 P 2d 668.

#### Verbal Clarity

Clause in disability insurance policy which provided that benefits were payable only in cases involving continuous and total disability within 30 days of date of accident preventing performance of every duty pertaining to insured's occupation precluded insured from recovering benefits under policy where he had returned to work and was able to perform part of his duties since, under this section, language

of contract governs its interpretation if language is clear and explicit and, as matter of law, insured did not come within policy coverage. *Nelson v. Combined Ins. Co. of America*, 155 M 105, 467 P 2d 707.

Restrictive covenant giving lessee exclusive right to operate drugstore did not extend to property beyond the plot described in the lease and summary judgment for lessor was properly granted because the intent of the parties at the time they entered into the agreement was reduced to writing and expressed in clear and explicit language that the exclusive covenant applied to "the entire premises covered by the plans and specifications." *Matteucci's Super Save, Drug v. Hustad Corp.*, 158 M 311, 491 P 2d 705.

#### Wheat Crop

Unambiguous provision in insurance policy, stating that the insurance company agreed to pay all damages which the insured was obligated to pay resulting from injury to tangible property, applied to negligent sale of winter wheat seed instead of spring wheat seed, since wheat field and crops were tangible property. *Safeco Ins. Co. v. Munroe*, — M —, 527 P 2d 64.

### 13-705. (7530) Interpretation of written contracts.

#### Insurance Contract

Evidence that defendant had not purchased an endorsement which was available upon payment of additional premium, was not admissible to show the intention to exclude such coverage from the insurance contract, where policy provisions

were not ambiguous. *Safeco Ins. Co. v. Munroe*, — M —, 527 P 2d 64.

#### Parol Evidence Admissible

Provisions in real estate sale contract that time was of the essence and that payments could be made on or before



January 15 of each year created ambiguity sufficient that when vendee accelerated payment and made full payment to escrow agent, vendor's action for breach of contract could not be dismissed without hearing parol evidence to determine intention of the parties. *Kielmann v. Mogan*, 156 M 230, 478 P 2d 275.

#### Parol Evidence Not Admissible

Contract between husband and wife for payment of \$10,000 in purchase of partnership interest, which stated that the parties released each other from any further liability, was not an ambiguous contract, and could not be varied by parol evidence. *Merritt v. Merritt*, — M —, 526 P 2d 1375.

### 13-706. (7531) Writing—when disregarded.

#### Writing Controls

Where parties called their relationship to a piece of equipment that of lessor and lessee, and lessee was obligated to pay all charges for both the delivery and return of the equipment upon termination or expiration of the lease, pay all maintenance, carry insurance, pay all taxes, and

title remained in the lessor, and the instrument defining their relationship was entitled a lease, there was such overwhelming evidence that the arrangement was a lease, and not a contract of sale, that it was error for the trial court to find the latter. *American Mach. Co. v. Johnson*, 157 M 226, 483 P 2d 921.

### 13-707. (7532) Effect to be given to every part of contract.

#### Duty of Insurance Company to Defend

Insurance company that had agreed to defend taxidermist against liability for the risks incurred by shipping, had a duty to defend him against complaint of customer alleging delivery of substituted animal heads. *Atcheson v. Safeco Ins. Co.*, — M —, 527 P 2d 549.

#### Insurance Contract

Printed indemnity clause on back of purchase order was inoperative where typed portion of purchase order merely accepted offer of seller with specific reference to attached modifications and made no mention of indemnity clause. *Hoerner Waldorf Corp. v. Bumstead-Woolford Co.*, 158 M 472, 494 P 2d 293.

### 13-708. (7533) Several contracts—when taken together.

#### Contract and Bond

Subcontractor's agreement with contractor and bond covering subcontractor were construed together in suit by con-

tractor on subcontractor's bond. *Carl Weissman & Sons, Inc. v. St. Paul Fire & Marine Ins. Co.*, 152 M 291, 448 P. 2d 740.

### 13-710. (7535) Words to be understood in usual sense.

#### "Final and Conclusive"

Contract stating that the architect/engineer's estimates and decisions shall be "final and conclusive" was properly interpreted by the court to mean that the engineer's certificate of completion was binding upon the parties, absent any proof of fraud or mistake on the part of the engi-

neer. *United Pacific Ins. Co. v. County of Flathead*, 499 F 2d 1235.

#### "Trailer"

"Trailer" as used in restrictive covenant against their use was construed to refer to a type of structure and not the mobility of that structure. *Timmerman v. Gabriel*, 155 M 294, 470 P 2d 528.

### 13-713. (7538) Contracts explained by circumstances.

#### Contract of Sale

Substantial credible extrinsic evidence warranted resolution of ambiguity concerning grazing permits in real estate sales contract in favor of buyers who were re-

peatedly assured during final negotiations that permits would be transferred to them as part of deal. *Dooling v. Casey*, 152 M 267, 448 P 2d 749.

### 13-717. (7542) Contract—partly written and partly printed, etc.

#### Insurance Policy

Stamped phrase "Double Indemnity" appearing on face of insurance policy must be interpreted in light of rider to

policy to which phrase refers. *Niewoehner v. Western Life Ins. Co.*, 149 M 57, 422 P 2d 644.

Printed indemnity clause on back of purchase order was inoperative where typed portion of purchase order merely accepted offer of seller with specific ref-

erence to attached modifications and made no mention of indemnity clause. *Hoerner Waldorf Corp. v. Bumstead-Woolford Co.*, 158 M 472, 494 P 2d 293.

### 13-719. (7544) Inconsistent words rejected.

#### Contradictory Provisions

In suit by contractor for additional expenses incurred in obtaining suitable gravel to perform road construction contract, contradiction whereby state highway commission on one hand warranted condition of gravel pit but on other hand disclaimed any liability from reliance on

such representations, would be resolved in favor of contractor for reason that contractor was in "take it or leave it" situation and justifiably relied upon commission's warranty. *Haggart Constr. Co. v. State Highway Commission*, 149 M 422, 427 P 2d 686.

### 13-720. (7545) Words to be taken most strongly against whom.

#### Letter of Credit

Ambiguous letter of credit issued by bank mentioning two different amounts and stating that the bank was guaranteeing "these funds" should be interpreted most strongly against the bank. *Miller v. Walter*, — M —, 527 P 2d 240.

#### Option in Lease

Agricultural tenant was not entitled to exercise option to buy contained in lease of land after expiration of lease, even though holding over, in light of statute providing that uncertainties in contract be interpreted against plaintiff-promisor, causing uncertainty to exist. *Miller v. Meredith*, 149 M 125, 423 P 2d 595.

### 13-724. (7549) Time—when of essence.

#### Time Not of Essence

Time was not of essence of a contract created by correspondence which did not specify a delivery date, although seller had agreed to try to get crane shipped within a week. Admission of parol evi-

dence to resolve ambiguity of delivery date was error, since there was no delivery date specified, and thus no ambiguity. *Martel Constr., Inc. v. Gleason Equipment, Inc.*, — M —, 534 P 2d 883.

## CHAPTER 8—UNLAWFUL CONTRACTS

### Section

13-812. The sale of gasoline and distillates on other than gross volume basis unlawful.

### 13-801. (7553) What is unlawful.

#### Public Policy

The absence of "omnibus" coverage in a liability insurance policy with car dealer is not violative of public policy, if there is no violation of any statute. *Universal Underwriters Ins. Co. v. State Farm Mutual Auto Ins. Co.*, — M —, 531 P 2d 668.

#### Release Void as Contrary to Public Policy

This section together with sections 58-607 and 49-105 were broad enough to render illegal any exculpatory clause or release relieving a potential tort-feasor from all liability for future negligent conduct

where such clause or release was contrary to public policy or against the public interest; release relieving county fair board from any liability to livestock while on fairgrounds was illegal and unenforceable as contrary to public policy and against public interest and precluded county from disclaiming liability in negligence action for exhibitor's horses killed in barn fire on county fairgrounds; suppression of release in exhibitor's negligence action was not error or ground for new trial. *Haynes v. County of Missoula*, 163 M 270, 517 P 2d 370, 69 ALR 3d 1008.

### 13-804. (7556) Contracts fixing damages void.

#### Exceptions

Limitation of telephone company's liability for errors in contract for "yellow

pages" advertising and providing for maximum recovery, was valid and not void under this section. *State ex rel.*

Mountain States Telephone & Telegraph Co. v. District Court, 160 M 443, 503 P 2d 526.

Without a demonstration of bad faith, fraud, or willful or wanton conduct by telephone company, a limitation of liability for errors and omissions in its ad-

vertising expressed in a written and signed contract is reasonable and it was within the power of the company and subscribers to include such a clause in a valid and binding contract. State ex rel. Mountain States Telephone & Telegraph Co. v. District Court, 160 M 443, 503 P 2d 526.

### 13-806. (7558) Restraints upon legal proceedings.

#### Arbitration Provision

On application for writ of supervisory control, district court would be required to take jurisdiction of claim by contractor for additional work performed on contract with drainage district, notwithstanding decision for drainage district under arbitration clause, since arbitration cannot be final as to questions of law. State ex rel. Cave Constr. Co. v. District Court, 150 M 18, 430 P 2d 624.

#### Architect's Insurance Policy

Insurance policy requirement that insured would have to file complaint on or before certain date, in order to receive coverage, would be void as against public policy under this section. J. G. Link & Co. v. Continental Casualty Co., 470 F 2d 1133.

### 13-808. (7560) Exception in favor of sale of good will.

#### Sale of Good Will

Since no money changed hands, there was no sale of good will within the meaning of this section where doctor left clinic to establish independent practice, regardless of provision in contract between the parties which stated that separation from

the clinic constituted a sale to it of the departing member's good will; therefore, this section did not apply and covenant not to compete with clinic for three years after separation was void under section 13-807. Western Montana Clinic v. Jacobson, — M —, 544 P 2d 807.

### 13-809. (7561) Exception in favor of partnership agreements.

#### Unincorporated Association

Where clinic was organized as an unincorporated association and its articles provided that as between the association and its members the relationship would be the same as if it were a corporation, part-

nership relation contemplated by this section did not exist, and restrictive covenant not to compete was void under section 13-807. Western Montana Clinic v. Jacobson, — M —, 544 P 2d 807.

**13-812. The sale of gasoline and distillates on other than gross volume basis unlawful.** The sale of gasoline and distillates on a temperature corrected basis, or on any basis other than the gross volume of gasoline or distillate actually delivered, is void. Any contract in violation of this section shall be unenforceable to the extent of the violation.

**History:** En. 13-812 by Sec. 1, Ch. 198, L. 1975; amd. Sec. 1, Ch. 274, L. 1977.

#### Title of Act

An act declaring the sale of gasoline on any basis other than gross volume delivered to be void.

#### Amendments

The 1977 amendment inserted references to distillates.

## CHAPTER 9—EXTINCTION OF CONTRACTS—RESCISSION—ALTERATION—CANCELLATION

### 13-903. (7565) When party may rescind.

#### Failure of Consideration

Under this section, party may rescind contract when consideration for his obligation fails in whole or in part through fault of party as to whom he rescinds,

or if such consideration, before it is rendered to him, fails in material respect from any cause. Brown v. First Federal Savings & Loan Assn. of Great Falls, 154 M 79, 460 P 2d 97.



**Fraud**

Rescission of contract, alleging fraudulent misrepresentations as to taxes and insurance, was properly denied where sellers had paid taxes and procured insurance according to the terms of the sale contract. *Dunlap v. Nelson*, — M —, 529 P 2d 1394.

**Misrepresentation**

Sellers' representation that motel was "capable" of producing certain income

was an expression of opinion, and would not warrant rescission of contract. *Beierle v. Taylor*, — M —, 524 P 2d 783.

**Partial Failure of Consideration**

Sellers' failure to furnish bill of sale for motel furnishings, which resulted in no damage to the buyer, cannot be the basis for rescission. *Beierle v. Taylor*, — M —, 524 P 2d 783.

**13-905. (7567) Rescission—how effected.****Arbitration**

Arbitration clause covering division of down payment in event of a specific failure of consideration was enforceable, and the failure to demand arbitration in defending against an attempt to rescind for fraud did not constitute a waiver of the right to arbitrate since the arbitration clause itself would have fallen if the contract had been rescinded for fraud. *Dunlap v. Nelson*, — M —, 529 P 2d 1394.

**Oral Statements**

Where the purchasers made a new offer based on the belief that the vendor's mineral interest would soon be reduced because of a third-party claim asserted after the execution of the original contract, statement by purchaser that "the deal was off" was insufficient to rescind or modify the written contract. *Kretschmar v. Bickerstaff*, 158 M 178, 489 P 2d 1285.

**Return and Acceptance of Policy Premium**

Credit life policy was not rescinded by insurer's tender back of premium to insured's estate and by estate's retention of money in absence of consent to rescission by insured's widow as administratrix or as owner of automobile purchased on credit. *Lentz v. Prudential Ins. Co. of America*, — M —, 520 P 2d 769.

**Waiver of Right to Rescind**

In action by motorist, injured by negligence of insured, to recover under insured's policy, insurer impliedly waived right to rescind policy by accepting premium payments from insured and by paying other claims arising out of the same accident, after insurer had discovered insured's fraudulent misrepresentations in application for policy. *McLane v. Farmers Ins. Exchange*, 150 M 116, 432 P 2d 98, explained in — M —, 520 P 2d 769.

**13-907. (7569) Written contracts—how modified.****Contingent Fee Contract**

A contingent fee contract providing that in event suit was instituted attorney would be entitled to 40 per cent of any sums recovered is binding in absence of written contract or executed oral contract varying the original contract. *Gross v. Holzworth*, 151 M 179, 440 P 2d 765.

**Estoppel**

Evidence of telephone conversations tending to show acquiescence to agreement to repurchase shares of stock pursuant to corporate officer's previously executed stock repurchase agreement was admissible to show that seller had waived benefit of or become estopped to assert his rights under some or all provisions in his favor in the agreement where conversations were

not introduced to vary terms of the contract but to demonstrate that the tender and acceptance had in fact been made. *State ex rel. Howeth v. D. A. Davidson & Co.*, — M —, 517 P 2d 722.

**Partial Execution**

Alleged oral agreement to pay director commission for procuring purchaser for corporation's realty and personality was not an "executed oral agreement" within this section since there was no performance by corporation and director's performance was consistent with performance of his duties as an officer-director and not necessarily pursuant to contract. *Hart v. Billings Public Stockyards*, 157 M 345, 486 P 2d 120.

## TITLE 14—CO-OPERATIVES

### Chapter

2. Co-operative associations, 14-203, 14-216.
3. Co-operative agricultural corporations and districts, 14-307, 14-312.
4. Co-operative Marketing Act, 14-408 to 14-410, 14-417.1, 14-430, 14-431.
5. Rural Electric and Telephone Co-operative Act, 14-502, 14-521, 14-530.
6. Montana Credit Union Act, 14-601 to 14-677.

### 14-130 to 14-158. Repealed.

#### Repeal

Sections 14-130 to 14-158 (Secs. 1 to 29, Ch. 236, L. 1963; Sec. 1, Ch. 152, L. 1967; Secs. 1 to 5, Ch. 213, L. 1971), relating to

credit unions, were repealed by Sec. 78, Ch. 38, Laws 1975. For new law, see secs. 14-601 to 14-677.

## CHAPTER 2—CO-OPERATIVE ASSOCIATIONS

### Section

14-203. First, regular and special meetings.

14-216. Merger or consolidation of co-operative associations.

**14-203. (6377) First, regular and special meetings.** (1) First meeting. As soon as ten (10) or more shares of the capital stock shall be subscribed, the commissioners shall convene a meeting of the subscribers for the purpose of electing directors, adopting bylaws, and transacting such other business as shall properly come before them. Notice thereof shall be given by depositing same in the post office, properly addressed, to each subscriber, at least ten (10) days before the time fixed, stating the object, time, and place of said meeting. Directors of associations organized under this act shall be elected by the stockholders, and hold their office for such period of time as shall be provided in the bylaws.

(2) Regular and special meetings. (a) Unless the bylaws provide otherwise, stockholders' meetings shall be held at the principal office or such other place as the board may determine.

(b) An annual stockholders' meeting shall be held at the time fixed in or pursuant to the bylaws. In the absence of a bylaw provision, such meeting shall be held within six (6) months after the close of the fiscal year at the call of the president or board.

(c) Special stockholders' meetings may be called by the president, board, or stockholders having one-fifth ( $1/5$ ) of the votes entitled to be cast at such meeting.

(d) Written notice, stating the place, day and hour, and in case of a special stockholders' meeting the purposes for which the meeting is called, shall be given not less than seven (7) nor more than thirty (30) days before the meeting at the direction of the person calling the meeting.

(e) At any meeting at which stockholders are to be represented by delegates, notice to such stockholders may be given by notifying such delegates and their alternates. Notice may consist of a notice to all stockholders, or may be in the form of an announcement at the meeting at which such delegates or alternates are elected.

(f) A quorum at a regular or special meeting shall be as provided in the associations articles or bylaws. If the articles or bylaws do not define a quorum, ten per cent (10%) of the first one hundred (100) stockholders plus five per cent (5%) of any additional stockholders, present in person, shall constitute a quorum. Stockholders represented by signed vote may be counted in computing a quorum only on those questions as to which the signed vote is taken.

**History:** En. Sec. 872, Civ. C. 1895; re-en. Sec. 4212, Rev. C. 1907; re-en Sec. 6377, R. C. M. 1921; amd. Sec. 2, Ch. 273, L. 1955; amd. Sec. 1, Ch. 342, L. 1973.

#### Amendments

The 1973 amendment designated the previous language as subsection (1) and added subsection (2).

**14-216. (6390) Merger or consolidation of co-operative associations.** It shall be lawful for two (2) or more co-operative associations formed, or which may be hereafter formed under the laws of the state of Montana, to merge or consolidate with each other, or with one or more associations incorporated under the laws of another state or states relating to organization of co-operative associations, by complying with the provisions of chapter 2 of Title 14, R.C.M. 1947, or with the applicable laws of the state where the surviving or new association has its principal place of business.

(1) Plan for merger or consolidation. Before an association may merge or consolidate with any other association, a written plan of merger or consolidation shall be prepared by the board of directors of one or both associations, by a committee appointed for that purpose by the board of directors of one or both associations, or by a committee composed of at least ten per cent (10%) of the stockholders of one of the associations concerned. Such plan shall set forth all the terms of the merger or consolidation, and the proposed effect thereof on each of the stockholders of the associations concerned. In the case of consolidation the plan shall also contain a copy of the proposed articles for the new association to be formed.

(2) Notice. Notice of the proposed plan, and in the case of consolidation, of the proposed new articles, shall be mailed to each stockholder of the associations to be affected thereby.

(3) Meeting of association. The notice shall advise the stockholders of each association of the time and place each association shall meet, at which time the proposal shall be considered and voted upon by each association. The meetings shall be held not less than thirty (30) or more than sixty (60) days after the mailing of notice. The plan shall be considered adopted if a quorum is present and two-thirds ( $\frac{2}{3}$ ) of those voting vote in its favor.

(4) Effective date of merger or consolidation. Within thirty (30) days after the merger or consolidation plan has been adopted, documents of merger or consolidation setting forth the plan and the manner of adoption thereof shall be signed and acknowledged by the president or vice-president, and by the secretary or assistant secretary of each association merging or consolidating, and filed with the clerk and recorder of the county in which the principal office of the new or surviving association is located if the office is in Montana, and with the Montana secretary of state. If the new or surviving association has its principal office in Montana,



the merger or consolidation shall become effective as of the date of filing with the Montana secretary of state; if its principal office is outside the state of Montana, the merger or consolidation shall become effective upon full compliance with the laws of the state in which its principal office is located. If there is a merger, the articles and bylaws of the surviving association are amended to the extent provided in the documents setting forth the plan of merger.

(5) Sale or disposition of assets. At any meeting the stockholders of a co-operative association may authorize the disposition or sale of all or substantially all of the association's assets, if notice that such disposition or sale will be considered at such meeting has been given to all persons entitled to vote thereon, and if disposition or sale is approved by two-thirds ( $\frac{2}{3}$ ) of those entitled to vote thereon voting at the meeting.

(6) Rights and duties of new or surviving association. After the effective date, the associations which are parties to the plan become a single association. In the case of a merger, the surviving association is that association so designated in the plan. In the case of a consolidation, the new association is the association provided for in the plan. The separate existence of all associations which are parties to the plan, except the surviving or new association, then ceases.

The surviving or new association possesses all the rights and all the property of each of the individual associations, and is responsible for all their obligations. Title to any property is vested in the surviving or new association with no reversion or impairment thereof caused by the merger or consolidation. No right of any creditor may be impaired by the merger or consolidation without his consent.

(7) Statute of limitations. No action may be maintained to invalidate any sale, merger or consolidation taken pursuant to this chapter because of the manner of its adoption, unless the action is commenced within two (2) years after the date of filing same.

**History:** En. Sec. 1, Ch. 140, L. 1917; re-en. Sec. 6390, R. C. M. 1921; amd. Sec. 2, Ch. 342, L. 1973.

#### Amendments

The 1973 amendment completely rewrote this section; for prior law, see parent volume.

#### Repealing Clause

Section 3 of Ch. 342, Laws 1973 read "Sections 14-217, 14-218 and 14-220, R. C. M. 1947, are repealed."

#### Effective Date

Section 4 of Ch. 342, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 17, 1973.

### 14-217, 14-218. (6391, 6392) Repealed.

#### Repeal

Sections 14-217, 14-218 (Secs. 2, 3, Ch. 140, L. 1917), relating to terms, certifi-

cates and effects of consolidation, were repealed by Sec. 3, Ch. 342, Laws 1973.

### 14-220. (6394) Repealed.

#### Repeal

Section 14-220 (Sec. 1, Ch. 161, L. 1917), relating to use of terms in corporate or

firm names, was repealed by Sec. 3, Ch. 342, Laws 1973.

**14-221, 14-222. (6395, 6396) Repealed.****Repeal**

Sections 14-221, 14-222 (Secs. 2, 3, Ch. 161, L. 1917), relating to issuance of cer-

tificates of incorporation and violations of act, were repealed by Sec. 19, Ch. 62, Laws 1977.

### CHAPTER 3—CO-OPERATIVE AGRICULTURAL CORPORATIONS AND DISTRICTS

**Section**

14-307. Lien of corporate indebtedness upon membership lands.

14-312. Bylaws—recording and amending.

**14-307. (6403) Lien of corporate indebtedness upon membership lands.**

After the date of the inclusion of any land or property as a member in any corporation or district organized under the provisions of this section, all mortgage or bonded indebtedness created by such corporation or district is a first lien upon the membership lands to an extent not to exceed 18% of the taxable value thereof if the land is grazing or agricultural and not to exceed 36% of the taxable value thereof if the land is horticultural or vegetable-producing. The recording of the copy of the articles of incorporation or petition to become a member of such corporation or district is notice to all subsequent lien claimants that the lands are subject to a first lien. However, nothing in this section may be construed as placing a limit upon the indebtedness that may be made a lien against any of the corporate or property assets of the corporation or district, as distinguished from membership lands individually owned.

**History:** En. Sec. 7, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6403, R. C. M. 1921; amd. Sec. 33, Ch. 566, L. 1977.

**Amendments**

The 1977 amendment changed the limitation on liens on membership lands from

5% of assessed valuation of grazing and agricultural lands to 18% of taxable value and from 10% of assessed valuation of horticultural or vegetable-producing lands to 36% of taxable value; and made minor changes in phraseology and punctuation.

**14-312. (6408) Bylaws—recording and amending.** (1) The bylaws and all amendments and additions thereto shall be recorded.

(2) The bylaws may be repealed or amended or new bylaws may be adopted at the annual meeting, or at any other meeting of the members called for that purpose by the directors, by a vote representing two-thirds of the stock or other evidences of membership or by two-thirds of the members. The written assent of the holders of two-thirds of the stock or other evidences of membership or of two-thirds of the members is effective to repeal or amend a bylaw or to adopt additional bylaws. The power to repeal and amend the bylaws and to adopt new bylaws may, by a similar vote at any such meeting or by similar written assent, be delegated to the board of directors or trustees. That power, when delegated, may be revoked by a similar vote at any such meeting of the members.

**History:** En. Sec. 3, Art. 2, Ch. 152, L. 1921; re-en. Sec. 6408, R. C. M. 1921; amd. Sec. 8, Ch. 62, L. 1977.

**Amendments**

The 1977 amendment inserted "and all amendments and additions thereto" in

subsection (1); deleted "and may be amended as provided in section 15-303 of this code" from the end of subsection (1); and added subsection (2).

## CHAPTER 4—CO-OPERATIVE MARKETING ACT

## Section

14-408. Articles of incorporation.

14-409. Amendments to articles of incorporation.

14-410. Bylaws.

14-417.1. Associations exempt from antimonopoly provisions.

14-430. Reserves—distribution of net earnings.

14-431. Merger or consolidation of cooperative associations—sale of substantially all assets.

**14-408. (6435) Articles of incorporation.** Each association formed under this act must prepare and file articles of incorporation, setting forth:

- (a) The name of the association;
- (b) The purposes for which it is formed;
- (c) The place where its principal business will be transacted;
- (d) The term for which it is to exist, which may be perpetual;
- (e) The number of its directors or trustees, which shall not be less than five nor more than thirteen, and the names and residences of those who are appointed for the first three months and until their successors are elected and qualified.

(f) If organized without capital stock, whether the property rights and interest of each member shall be equal or unequal; and if unequal, the article shall set forth the general rule or rules applicable to all members by which the property rights and interests, respectively, of each member may and shall be determined and fixed and the association shall have the power to admit new members who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules.

(g) The articles must be subscribed by the incorporators and acknowledged by one of them before an officer authorized by the law of this state to take and certify acknowledgments of deeds and conveyances; and shall be filed in accordance with the provisions of the general corporation law of this state, and when so filed the said articles of incorporation, or certified copies thereof, shall be received in all the courts of this state, and other places, as prima facie evidence of the facts contained therein, and of the due incorporation of such association.

**History:** En. Sec. 8, Ch. 233, L. 1921; re-en. Sec. 6435, R. C. M. 1921; amd. Sec. 1, Ch. 298, L. 1977.

**Amendments**

The 1977 amendment substituted "which may be perpetual" in subdivision (d) for "not exceeding forty years"; deleted a sentence at the end of subdivision (f)

which read: "This provision of the articles of incorporation shall not be altered, amended, or repealed except by the written consent or vote of three fourths of the members"; and deleted a sentence at the end of subdivision (g) which read: "A certified copy of the articles of incorporation shall also be filed with the dean of the state college of agriculture."

**14-409. (6436) Amendments to articles of incorporation.** At any time after filing, the articles of incorporation may be amended. Any amendment of the articles of incorporation shall be approved by two-thirds of the directors and then adopted by vote of not less than two-thirds of those stockholders voting thereon at any regular meeting of the stockholders or at a special meeting of the stockholders called for that purpose. A state-



ment setting forth the amendment shall be executed and acknowledged on behalf of the association by its president or vice-president and its corporate seal affixed thereto and attested by its secretary. The statement shall be filed in the office of the secretary of state who shall thereupon issue a certificate of amendment of the articles of incorporation. A certified copy of such certificate shall be filed in the office of the county clerk for the county in which the principal office of the association is located.

**History:** En. Sec. 9, Ch. 233, L. 1921; re-en. Sec. 6436, R. C. M. 1921; amd. Sec. 2, Ch. 298, L. 1977.

#### Amendments

The 1977 amendment rewrote this section; for previous text see parent volume.

**14-410. (6437) Bylaws.** Each association incorporated under this act must, within thirty days after its incorporation, adopt for its government and management a code of bylaws, not inconsistent with the powers granted by this act. A majority vote of the members or stockholders, or their written assent, is necessary to adopt such bylaws. The bylaws may be amended at any regular or special meeting if approved by a majority vote of the stockholders voting thereon. Each association under its bylaws may also provide for any or all of the following matters:

(a) to (i) \* \* \* [Same as parent volume.]

**History:** En. Sec. 10, Ch. 233, L. 1921; re-en. Sec. 6437, R. C. M. 1921; amd. Sec. 3, Ch. 298, L. 1977.

#### Amendments

The 1977 amendment inserted the third sentence.

**14-417.1. Associations exempt from antimonopoly provisions.** Associations executing marketing contracts in compliance with the provisions of this act shall not be deemed to be a conspiracy, a combination in restraint of trade or an illegal monopoly or trust in an attempt to lessen competition or fix prices arbitrarily under the provisions of section 51-401.

**History:** En. 14-417.1 by Sec. 1, Ch. 467, L. 1973.

#### Title of Act

An act excluding agricultural associations formed under the Co-operative Marketing Act from the provisions of section 94-1104, R. C. M. 1947.

#### Compiler's Notes

Section 51-401, referred to in this section, was originally numbered 94-1104 and the text may be found in bound Volume Eight under sec. 94-1104.

### 14-418. (6445) Repealed.

#### Repeal

Section 14-418 (Sec. 18, Ch. 233, L. 1921; Sec. 1, Ch. 144, L. 1923), relating to the

annual report to the commissioner of agriculture, was repealed by Sec. 173, Ch. 218, Laws of 1974.

**14-430. Reserves—distribution of net earnings.** (1) An association organized under this chapter may set aside such part of its net earnings as its board of directors considers advisable for the purpose of creating or maintaining a capital reserve. In addition to such capital reserve, the directors may set aside a sum not to exceed 5% of the annual net earnings of the association, which shall be used for the purposes of promoting and teaching cooperative organization and principles. The directors may establish and accumulate reserves for buildings, machinery and equipment, depreciation, losses, and other proper purposes.

(2) Net earnings in excess of any such deductions shall be distributed annually to patrons on the basis of patronage. An association subject to the provisions of this chapter may distribute net earnings in cash, credits, stock, revolving fund certificates, other certificates or securities of the association or of other associations, or in any combination thereof.

**History:** En. 14-430 by Sec. 4, Ch. 298, L. 1977.

sions relating to amendment and filing of articles of incorporation and amendment of bylaws, providing for reserves and distribution of net earnings, and providing for merger of such associations; amending sections 14-408, 14-409, and 14-410, R. C. M. 1947.

#### **Title of Act**

An act to revise laws relating to cooperative marketing associations, providing for perpetual existence, changing provi-

**14-431. Merger or consolidation of cooperative associations—sale of substantially all assets.** (1) It is lawful for two or more cooperative associations formed, before or after July 1, 1977, under the laws of the state of Montana to merge or consolidate with each other. One or more such associations may merge or consolidate with one or more associations incorporated under the laws of another state relating to organization of cooperative associations by complying with the provisions of this chapter or with the applicable laws of the state where the surviving or new association has its principal place of business.

(2) Before an association may merge or consolidate with any other association, a written plan of merger or consolidation shall be prepared by the board of directors of one or both associations by a committee appointed for that purpose by the board of directors of one or both associations or by a committee composed of at least 10% of the stockholders of one of the associations concerned. Such plan shall set forth all the terms of the merger or consolidation and the proposed effect thereof on each of the stockholders of the associations concerned. In the case of consolidation, the plan shall also contain a copy of the proposed articles for the new association to be formed.

(3) Notice of the proposed plan and, in the case of consolidation, of the proposed new articles shall be mailed to each stockholder of the associations to be affected thereby.

(4) The notice shall advise the stockholders of each association of the time and place that each association will meet, at which time the proposal shall be considered and voted upon by each association. The meetings may be held not less than 30 or more than 60 days after the mailing of notice. The plan shall be considered adopted if a quorum is present and two-thirds of those voting vote in its favor.

(5) Within 30 days after the merger or consolidation plan has been adopted, documents of merger or consolidation setting forth the plan and the manner of adoption thereof shall be signed and acknowledged by the president or vice-president and by the secretary or assistant secretary of each association merging or consolidating and filed with the clerk and recorder of the county in which the principal office of the new or surviving association is located if the office is in Montana and with the Montana secretary of state. If the new or surviving association has its principal office in Montana, the merger or consolidation becomes effective as of the date of filing with the Montana secretary of state. If its principal office is

outside the state of Montana, the merger or consolidation becomes effective upon full compliance with the laws of the state in which its principal office is located. If there is a merger, the articles and bylaws of the surviving association are amended to the extent provided in the documents setting forth the plan of merger.

(6) At any meeting, the stockholders of a cooperative association may authorize the disposition or sale of all or substantially all of the association's assets if notice that such disposition or sale will be considered at such meeting has been given to all persons entitled to vote thereon and if disposition or sale is approved by two-thirds of those stockholders voting at the meeting.

(7) On the effective date, the associations which are parties to a plan adopted pursuant to this section become a single association. In the case of a merger, the surviving association is that association so designated in the plan. In the case of a consolidation, the new association is the association provided for in the plan. The separate existence of all associations which are parties to the plan, except the surviving or new association, then ceases. The surviving or new association possesses all the rights and all the property of each of the individual associations and is responsible for all their obligations. Title to any property is vested in the surviving or new association with no reversion or impairment thereof caused by the merger or consolidation. No right of any creditor may be impaired by the merger or consolidation without his consent.

(8) No action may be maintained to invalidate any sale, merger, or consolidation taken pursuant to this chapter because of the manner of its adoption unless the action is commenced within 2 years after the required filings have been made in relation to such corporate action or, if none is required, after the effective date of such corporate action.

History: En. 14-431 by Sec. 5, Ch. 298,  
L. 1977.

## CHAPTER 5—RURAL ELECTRIC AND TELEPHONE CO-OPERATIVE ACT

### Section

14-502. Purpose.

14-521. Disposition of property.

14-530. Definitions.

**14-502. Purpose.** Co-operative, nonprofit, membership corporations may be organized under this act for the following purposes:

(a) For the purpose of supplying electric energy and promoting and extending the use thereof in rural areas, as provided in this act.

(b) \* \* \* [Same as parent volume.]

Corporations organized under this act and corporations which become subject to this act in the manner hereinafter provided are hereinafter referred to as "co-operatives."

History: En. Sec. 2, Ch. 172, L. 1939;  
amd. Sec. 2, Ch. 80, L. 1957; amd. Sec. 9,  
Ch. 7, L. 1971.

### Amendments

The 1971 amendment substituted "as provided in this act" at the end of subdivision (a) for "in which electrical current



and service are not otherwise available, from existing facilities and plants."

#### Electric Service

Where electrical service was available from utility and utility was ready, willing and able to serve new customer, electrical co-operative had no right under this section to serve customer, notwithstanding that co-operative had available power line

3,400 feet from site while utility's closest line was 6 miles from site, since availability of service from existing facilities and plants cannot be determined solely on basis of distance between existing transmission lines and site where electrical energy is to be delivered. *Montana Power Co. v. Sun River Electric Cooperative, Inc.*, 157 M 468, 487 P 2d 307.

### DECISIONS UNDER FORMER LAW

#### Electric Service

In determining that electrical service was available from existing facilities of private company thereby denying co-operative right to supply electric service to potential customer, court relied upon evidence that private company was serving

other customers in area and evidence that distance private company would have to extend its service to supply new customer was less than distance co-operative would have to extend its service to supply same customer. *Montana Power Co. v. Fergus Elec. Co-op*, 149 M 258, 425 P 2d 329.

**14-521. Disposition of property.** A co-operative may not sell, mortgage, lease or otherwise dispose of or encumber all or any substantial portion of its property unless such sale, mortgage, lease or other disposition or encumbrance is authorized at a duly held meeting of members thereof by the affirmative vote of not less than two-thirds ( $\frac{2}{3}$ ) of all the members of the co-operative, and unless the notice of such proposed sale, mortgage, lease or other disposition or encumbrance shall have been contained in the notice of the meeting; provided, however, that notwithstanding anything herein contained, or any other provisions of law, the board of trustees of a co-operative, without authorization by the members thereof, shall have full power and authority to authorize the execution and delivery of a mortgage or mortgages or a deed or deeds of trust upon, or the pledging or encumbrancing of, any or all of the property, assets, rights, privileges, licenses, franchises and permits of the co-operative, whether acquired or to be acquired, and wherever situated, as well as the revenues and income therefrom, all upon such terms and conditions as the board of trustees shall determine, to secure any indebtedness of the co-operative to the United States of America or any instrumentality or agency thereof or to any other financing sources within the United States; provided, further, that the board may upon the authorization of a majority of those members of the co-operative voting at a meeting of the members thereof, sell, lease, or otherwise dispose of all or a substantial portion of its property to another co-operative or foreign corporation doing business in this state pursuant to the act under which the co-operative is incorporated.

**History:** En. Sec. 21, Ch. 172, L. 1939; amd. Sec. 1, Ch. 17, L. 1971.

#### Amendments

The 1971 amendment added "or to any other financing sources within the United States" at the end of the first proviso;

added the second proviso; and made minor changes in phraseology.

#### Effective Date

Section 2 of Ch. 17, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 9, 1971.

### 14-528. Exemption from excise taxes—license fee.

#### Cross-References

Secretary of state's functions trans-

ferred to department of revenue, sec. 82A-1802.

**14-530. Definitions.** In this act, unless the context otherwise requires:

(a) "Rural area" as applied to all corporations organized under the provisions of paragraph (a) of section 14-502, means any area not included within the boundaries of any incorporated or unincorporated city, town, village or borough having a population in excess of thirty-five hundred (3500) persons at the time of the passage and approval of chapter 172, Session Laws of Montana, 1939, or subsequent thereto, and every incorporated municipality in which ninety-five per cent (95%) or more of the premises are served by an electric co-operative on the effective date of the Territorial Integrity Act of 1971; "rural area" as applied to all corporations organized under the provisions of paragraph (b) of section 14-502, means any area not included within the boundaries of any incorporated or unincorporated city or town having a population in excess of fifteen hundred (1500) persons.

(b) and (c) \* \* \* [Same as parent volume.]

**History:** En. Sec. 30, Ch. 172, L. 1939; amd. Sec. 1, Ch. 151, L. 1949; amd. Sec. 9, Ch. 80, L. 1957; amd. Sec. 10, Ch. 7, L. 1971.

#### **Amendments**

The 1971 amendment, in subdivision (a), inserted "and every incorporated municipality in which ninety-five per cent \* \* \* Territorial Integrity Act of 1971," and made a minor change in punctuation.

#### **Repealing Clause**

Section 11 of Ch. 7, Laws 1971 repealed all acts and parts of acts in conflict therewith.

#### **Separability Clause**

Section 12 of Ch. 7, Laws 1971 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

#### **Effective Date**

Section 13 of Ch. 7, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 1, 1971.

### **CHAPTER 6—MONTANA CREDIT UNION ACT**

#### **Section**

- 14-601. Short title.
- 14-602. Definition and purposes.
- 14-603. Organization procedure.
- 14-604. Form of articles and bylaws.
- 14-605. Amendments.
- 14-606. Use of name exclusive.
- 14-607. Office facilities.
- 14-608. Fiscal year.
- 14-609. Director of the department of business regulation.
- 14-610. Reports.
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- 14-612. Records.
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- 14-616. Societies—associations.
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- 14-621. Meetings of members.
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- 14-625. Compensation of officials.
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- 14-664. Suspension.
- 14-665. Liquidation.
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- 14-667. Conversion of charter.
- 14-668. Organization.
- 14-669. Membership.
- 14-670. Voting representative.
- 14-671. Additional rights and powers.
- 14-672. Taxation.
- 14-673. Stock transfer taxes.
- 14-674. Participation in government programs.
- 14-675. Instruction in schools.
- 14-676. Additional powers of director.
- 14-677. Severability.

**14-601. Short title.** This act shall be known and may be cited as the "Montana Credit Union Act."

**History:** En. 14-601 by Sec. 1, Ch. 38, L. 1975.

**Title of Act**

An act to provide for the organization,

operation, and supervision of co-operative, nonprofit thrift and credit associations to be known as credit unions and to define their powers; and repealing sections 14-130 through 14-158, R. C. M. 1947.

**14-602. Definition and purposes.** A credit union is a co-operative, nonprofit association, incorporated under this act, for the purposes of encouraging thrift among its members, creating a source of credit at a fair



and reasonable rate of interest, and providing an opportunity for its members to use and control their own money in order to improve their economic and social condition.

**History:** En. 14-602 by Sec. 2, Ch. 38,  
L. 1975.

**14-603. Organization procedure.** (1) Any seven (7) or more residents of this state, of legal age, who have a common bond defined in section 14-615, may organize a credit union and become charter members thereof by complying with this section.

(2) The subscribers shall execute in duplicate articles of incorporation, which conform to the applicable Montana corporation law, and agree to the terms thereof, which articles shall state:

(a) the name, which shall include the words "credit union" and which shall not be the same as that of any other existing credit union in this state, and the location where the proposed credit union is to have its principal place of business;

(b) that the existence of the credit union is perpetual;

(c) the par value of the shares of the credit union, which shall be in five dollar (\$5) multiples of not less than five dollars (\$5), nor more than twenty-five dollars (\$25);

(d) that the credit union shall be organized under this act for the purposes set forth therein;

(e) the names and addresses of the subscribers to the articles of incorporation, and the value of shares subscribed to by each, which shall be not less than five dollars (\$5); and

(f) that the credit union may exercise such incidental powers as are necessary or requisite to enable it to carry on effectively the business for which it is incorporated, and those powers which are inherent in the credit union as a legal entity.

(3) The subscribers shall prepare and adopt bylaws for the general government of the credit union consistent with this act, and execute the same in duplicate.

(4) The subscribers shall select at least five (5) qualified persons who agree to serve on the board of directors, and at least three (3) qualified persons who agree to serve on the supervisory committee. A signed agreement to serve in these capacities until the first annual meeting or until the election of their successors, whichever is later, shall be executed by those who so agree. This agreement shall be submitted to the director of the department of business regulation.

(5) The subscribers shall forward the articles of incorporation and the bylaws to the director of the department of business regulation. The director may issue a certificate of approval, if the articles and the bylaws are in conformity with this act and he is satisfied that the proposed field of operation is favorable to the success of such credit union and that the standing of the proposed organizers is such as to give assurance that its affairs will be properly administered. He shall return a copy of the bylaws and the articles to the applicants or their representatives, which shall be preserved in the permanent files of the credit union. The

application shall be acted upon within thirty (30) days. The articles of incorporation shall then be filed with the secretary of state who, upon payment of the filing fees therefor, shall issue a certificate of incorporation.

(6) The subscribers for a credit union charter shall not transact any business until formal approval of the charter has been received.

**History:** En. 14-603 by Sec. 3, Ch. 38,  
L. 1975.

**14-604. Form of articles and bylaws.** In order to simplify the organization of credit unions, the director of the department of business regulation shall cause to be prepared a form of articles of incorporation and a form of bylaws, consistent with this act, which may be used by credit union incorporators for their guidance. Such articles of incorporation and bylaws shall be available without charge to persons desiring to organize a credit union.

**History:** En. 14-604 by Sec. 4, Ch. 38,  
L. 1975.

**14-605. Amendments.** (1) The articles of incorporation or the bylaws may be amended as provided in the bylaws. Amendments to the articles of incorporation or bylaws shall be submitted to the director of the department of business regulation who shall approve or disapprove the amendments within 60 days.

(2) Amendments shall become effective upon:

(a) approval in writing by the director, for which no fee may be charged; and

(b) in the case of articles of incorporation, filing with the secretary of state.

**History:** En. 14-605 by Sec. 5, Ch. 38, division designation (2)(a); added subdivision (2)(b); and made minor changes in phraseology, punctuation and style.  
L. 1975; amd. Sec. 32, Ch. 71, L. 1977.

**Amendments**

The 1977 amendment inserted the sub-

**14-606. Use of name exclusive.** With the exception of a credit union organized under the provisions of this act or of any other credit union act, or an association of credit unions or a recognized chapter thereof, any person, corporation, copartnership or association using a name or title containing the words "credit union" or any derivation thereof or representing themselves in their advertising or otherwise as conducting business as a credit union shall be fined not more than five hundred dollars (\$500) or imprisoned not more than one (1) year, or both, and may be permanently enjoined from using such words in its name.

**History:** En. 14-606 by Sec. 6, Ch. 38,  
L. 1975.

**14-607. Office facilities.** (1) A credit union may change its place of business within this state upon written notice to the department of business regulation.

(2) A credit union may share office space with one (1) or more credit unions and contract with any person or corporation to provide facilities or personnel.

History: En. 14-607 by Sec. 7, Ch. 38,  
L. 1975.

**14-608. Fiscal year.** The fiscal year of each credit union organized under this act shall end on December 31.

History: En. 14-608 by Sec. 8, Ch. 38,  
L. 1975.

**14-609. Director of the department of business regulation.** (1) The director shall administer the laws of this state relating to credit unions. He may appoint or employ such special assistants, deputies, examiners, or other employees as are necessary for the purpose of administering or enforcing this act.

(2) The director may prescribe rules and regulations for the administration of this act and may establish chartering, supervisory and examination fees.

(3) The director shall, from time to time, issue rules and regulations prescribing the minimum amount of surety bond coverage and casualty, liability and fire insurance required of credit unions in relation to their assets or to the money and other personal property involved, or their exposure to risk.

History: En. 14-609 by Sec. 9, Ch. 38,  
L. 1975.

**14-610. Reports.** (1) Credit unions organized under this act shall report to the director annually on or before February 1 on forms supplied by him for that purpose. Additional reports may be required.

(2) A fine of five dollars (\$5) for each day a report is in arrears shall be levied against the offending credit union unless it is excused for cause by the director.

History: En. 14-610 by Sec. 10, Ch. 38,  
L. 1975.

**14-611. Examinations.** (1) The department of business regulation shall annually examine or cause to be examined each credit union. Each credit union and all of its officers and agents shall be required to give to representatives of the director of the department full access to all books, papers, securities, records and other sources of information under their control; and for the purpose of the examination the representatives may subpoena witnesses, administer oaths, compel the giving of testimony, and require the submission of documents.

(2) A report of the examination shall be forwarded to the executive officer of each credit union promptly after completion. The report shall contain comments relative to the management of the affairs of the credit union and also as to the general condition of its assets. Within sixty



(60) days after the receipt of the report, the directors and committeemen shall meet to consider matters contained in the report.

(3) In lieu of making an annual examination of a credit union, the director may accept an audit report of the condition of the credit union made by an auditor approved by the director. The cost of the audit shall be borne by the credit union.

**History:** En. 14-611 by Sec. 11, Ch. 38,  
L. 1975.

**14-612. Records.** (1) A credit union shall maintain all books, records, accounting systems and procedures in accordance with such rules as the director from time to time prescribes. In prescribing such rules, the director shall consider the relative size of a credit union and its reasonable capability of compliance.

(2) A credit union is not liable for destroying records after the expiration of the record retention time prescribed by the director.

(3) A photostatic or photographic reproduction of any credit union records shall be admissible as evidence of transactions with the credit union.

**History:** En. 14-612 by Sec. 12, Ch. 38,  
L. 1975.

**14-613. General powers.** A credit union may:

- (1) make contracts as provided for in this act;
- (2) sue and be sued;
- (3) adopt and use a common seal and alter same;
- (4) acquire, lease, hold and dispose of property, either in whole or in part, necessary or incidental to its operations;
- (5) at the discretion of the board of directors, require the payment of an entrance fee or annual membership fee, or both, of any person admitted to membership;
- (6) receive savings from its members in the form of shares or special purpose thrift accounts;
- (7) lend its funds to its members as hereinafter provided;
- (8) borrow from any source up to fifty per cent (50%) of total assets, after deduction of the notes payable account;
- (9) discount and sell any eligible obligations, subject to rules and regulations prescribed by the director;
- (10) sell all or substantially all of its assets or purchase all or substantially all of the assets of another credit union, subject to the approval of the director;
- (11) invest surplus funds as provided in this act;
- (12) make deposits in legally chartered banks, savings banks, building and loan associations, savings and loan associations, trust companies and central type credit union organizations;
- (13) assess charges to members in accordance with the bylaws for failure to meet promptly their obligations to the credit union;

(14) hold membership in other credit unions organized under this act or other acts, and in other associations and organizations composed of credit unions;

(15) declare dividends and pay interest refunds to borrowers as provided in this act;

(16) collect, receive and disburse moneys in connection with the sale of negotiable checks, money orders and other money type instruments, and for such other purposes as may provide benefit or convenience to its members, and charge a reasonable fee for such services, but not including checking account services;

(17) perform such tasks and missions as are requested by the federal government or this state or any agency or political subdivision thereof, when approved by the board of directors and not inconsistent with this act;

(18) contribute to, support or participate in any nonprofit service facility whose services will benefit the credit union or its membership, subject to such regulations as are prescribed by the director;

(19) make donations or contributions to any civic, charitable or community organizations as authorized by the board of directors, subject to regulations as are prescribed by the director; or

(20) purchase or make available insurance for its directors, officers, agents, employees and members.

History: En. 14-613 by Sec. 13, Ch. 38,  
L. 1975.

**14-614. Incidental powers.** A credit union may exercise such incidental powers as are granted corporations organized under the laws of this state including those that are necessary to enable it to promote and carry on most effectively its purposes.

History: En. 14-614 by Sec. 14, Ch. 38,  
L. 1975.

**14-615. Membership defined.** (1) The membership of a credit union shall be limited to and consist of the subscribers to the articles of incorporation and such other persons within the common bond set forth in the bylaws as have been duly admitted members, have paid the required entrance fee or membership fee, or both, have subscribed for one (1) or more shares, and have paid the initial installment thereon, and have complied with such other requirements as the articles of incorporation or bylaws specify.

(2) Credit union membership may include groups having a common bond of similar occupation, association or interest provided, that mere residence in a community may not establish a common bond of association or interest, or to employees of a common employer, and members of the immediate family of such persons.

History: En. 14-615 by Sec. 15, Ch. 38,  
L. 1975.

**14-616. Societies — associations.** Societies, and copartnerships composed primarily of individuals who are eligible for membership, and

corporations whose stockholders are composed primarily of such individuals, may be admitted to membership in the same manner and under the same conditions as individuals, but may not borrow in excess of their shareholdings.

**History:** En. 14-616 by Sec. 16, Ch. 38,  
L. 1975.

**14-617. Other credit unions.** Any credit union organized under this act may permit membership of any other credit union organized under this act or other acts.

**History:** En. 14-617 by Sec. 17, Ch. 38,  
L. 1975.

**14-618. Limited income persons.** Existing credit unions may include within their field of membership limited income persons as defined by the director of the department of business regulation for whom credit union services are otherwise unavailable.

**History:** En. 14-618 by Sec. 18, Ch. 38,  
L. 1975.

**14-619. Members who leave field.** Members who leave the field of membership may be permitted to retain their membership in the credit union as a matter of general policy of the board of directors.

**History:** En. 14-619 by Sec. 19, Ch. 38,  
L. 1975.

**14-620. Liability of members.** The members of the credit union shall not be personally or individually liable for the payment of its debts.

**History:** En. 14-620 by Sec. 20, Ch. 38,  
L. 1975.

**14-621. Meetings of members.** (1) The annual meeting and any special meetings of the members of the credit union shall be held at the time, place, and in the manner indicated by the bylaws.

(2) At all such meetings a member shall have but one (1) vote, irrespective of his shareholdings. No member may vote by proxy, but a member may vote by absentee ballot if the bylaws of the credit union so provide.

(3) A society, association, copartnership or corporation, having membership in the credit union, may be represented and have its vote cast by one of its members or shareholders, provided such person has been fully authorized by the organization's governing body.

(4) The board of directors may establish a minimum age, not greater than eighteen (18) years of age, as a qualification of eligibility to vote at meetings of the members, or to hold office, or both.

**History:** En. 14-621 by Sec. 21, Ch. 38,  
L. 1975.

**14-622. Election or appointment of officials.** (1) The credit union shall be directed by a board consisting of an odd number of directors, at least five (5) in number, to be elected at the annual membership meeting



by and from the members. All members of the board shall hold office for such terms as the bylaws provide.

(2) The board of directors shall appoint a supervisory committee of not less than three (3) members at the organization meeting and within thirty (30) days following each annual meeting of the members for such terms as the bylaws provide.

(3) The board of directors shall appoint a credit committee consisting of an odd number, not less than three (3), for such terms as the bylaws provide, or in lieu of a credit committee, a credit manager.

History: En. 14-622 by Sec. 22, Ch. 38,  
L. 1975.

**14-623. Record of board and committee members.** Within fifteen (15) days after election or appointment, a record of the names and addresses of the members of the board, committees and all officers of the credit union shall be filed with the department of business regulation on forms provided by the department.

History: En. 14-623 by Sec. 23, Ch. 38,  
L. 1975.

**14-624. Vacancies.** The board of directors shall fill any vacancies occurring in the board until successors elected at the next annual meeting have qualified. The board shall also fill vacancies in the credit and supervisory committees.

History: En. 14-624 by Sec. 24, Ch. 38,  
L. 1975.

**14-625. Compensation of officials.** No officer, director, or committee member, other than the treasurer, a credit manager, or a loan officer may be compensated for his service as such, but reasonable life, health, accident and similar insurance protection for a director or committee member shall not be considered compensation. Directors and committee members, while on official business of the credit union, may be reimbursed for necessary expenses incidental to the performance of the business.

History: En. 14-625 by Sec. 25, Ch. 38,  
L. 1975.

**14-626. Conflicts of interest.** No director, committee member, officer, agent or employee of the credit union shall in any manner, directly or indirectly, participate in the deliberation upon or the determination of any question affecting his pecuniary interest or the pecuniary interest of any corporation, partnership, or association (other than the credit union) in which he is directly or indirectly interested.

History: En. 14-626 by Sec. 26, Ch. 38,  
L. 1975.

**14-627. Executive officers.** (1) At their organization meeting and within fifteen (15) days following each annual meeting of the members, the directors shall elect from their own number an executive officer, who may be designated as chairman of the board or president; a vice-chairman

of the board or one (1) or more vice-presidents; a treasurer; and a secretary. The treasurer and the secretary may be the same individual. The persons so elected shall be the executive officers of the corporation.

(2) The terms of the officers shall be one (1) year, or until their successors are chosen and have duly qualified.

(3) The duties of the officers shall be prescribed in the bylaws.

(4) The board of directors may employ an officer in charge of operations whose title shall be either president and/or general manager; or, in lieu thereof, the board of directors may designate the treasurer or an assistant treasurer to act as general manager and be in active charge of the affairs of the credit union.

**History:** En. 14-627 by Sec. 27, Ch. 38,  
L. 1975.

**14-628. Authority of directors.** The board of directors shall have the general direction of the business affairs, funds, and records of the credit union.

**History:** En. 14-628 by Sec. 28, Ch. 38,  
L. 1975.

**14-629. Executive committee.** From the persons elected to the board, the board may appoint an executive committee of not less than three (3) directors who may be authorized to act for the board in all respects, subject to such conditions and limitations as are prescribed by the board.

**History:** En. 14-629 by Sec. 29, Ch. 38,  
L. 1975.

**14-630. Meetings of directors.** The board of directors and the executive committee shall meet as often as necessary, but one body must meet at least monthly and the other at least quarterly.

**History:** En. 14-630 by Sec. 30, Ch. 38,  
L. 1975.

**14-631. Duties of directors.** The directors shall:

(1) act upon applications for membership or appoint one or more membership officers to approve applications for membership under such conditions as the board prescribes. A record of a membership officer's approval or denial of membership shall be available to the board of directors for inspection. A person denied membership by a membership officer may appeal the denial to the board.

(2) purchase a blanket fidelity bond, in accordance with any rules of the director, to protect the credit union against losses caused by occurrences covered therein such as fraud, dishonesty, forgery, theft, misappropriation, misapplication, or unfaithful performance of duty by a director, officer, employee, member of an official committee, attorney-at-law, or other agent;

(3) determine from time to time the interest rate or rates consistent with this act to be charged on loans and authorize interest refunds, if any, to members from income earned and received in proportion to the interest paid by them on such classes of loans and under such conditions as the board prescribes;

(4) fix from time to time the maximum amount which may be loaned to any one member;

(5) declare dividends on shares in the manner and form provided in the bylaws;

(6) limit the number of shares which may be owned by a member, such limitations to apply alike to all members;

(7) have charge of the investment of surplus funds, except that the board of directors may designate an investment committee or any qualified individual to have charge of making investments under controls established by the board of directors;

(8) authorize the employment of such persons necessary to carry on the business of the credit union, including the credit manager, loan officers, and auditing assistants requested by the supervisory committee and fix the compensation, if any, of the treasurer and the general manager and provide for compensation for other employees within guidelines predetermined by the board of directors;

(9) authorize the conveyance of property;

(10) borrow or lend money to carry on the functions of the credit union;

(11) designate a depository or depositories for the funds of the credit union;

(12) suspend any or all members of the credit or supervisory committee for failure to perform their duties;

(13) appoint any special committees considered necessary; and

(14) perform such other duties as the members from time to time direct and perform or authorize any action not inconsistent with this act and not specifically reserved by the bylaws for the members.

**History:** En. 14-631 by Sec. 31, Ch. 38,  
L. 1975; amd. Sec. 45, Ch. 359, L. 1977.

#### **Amendments**

The 1977 amendment substituted "theft" in subdivision (2) for "embezzlement"; and made minor changes in phraseology and punctuation.

**14-632. Authority of credit committee.** The credit committee shall have the general supervision of all loans to members.

**History:** En. 14-632 by Sec. 32, Ch. 38,  
L. 1975.

**14-633. Meeting of credit committee.** The credit committee shall meet as often as the business of the credit union requires and not less frequently than once a month to consider applications for loans. No loan shall be made unless it is approved by a majority of the committee who are present at the meeting at which the application is considered.

**History:** En. 14-633 by Sec. 33, Ch. 38,  
L. 1975.

**14-634. Loan officers.** (1) The credit committee may appoint one (1) or more loan officers and delegate the power to approve loans, subject to such limitations or conditions as the credit committee prescribes.



(2) Loan applications not approved by a loan officer shall be reviewed and acted upon by the credit committee.

History: En. 14-634 by Sec. 34, Ch. 38,  
L. 1975.

**14-635. Credit manager.** The credit committee may be dispensed with, and a credit manager empowered to approve or disapprove loans under conditions prescribed by the board of directors. In the event the credit committee is dispensed with, the procedures prescribed in sections 14-632, 14-633 and 14-634 do not apply, and no loans shall be made unless approved by the credit manager, except the credit manager may appoint one (1) or more loan officers with the power to approve loans, subject to such limitations or conditions as he prescribes.

History: En. 14-635 by Sec. 35, Ch. 38,  
L. 1975.

**14-636. Duties of supervisory committee.** (1) The supervisory committee shall make or cause to be made a comprehensive annual audit of the books and affairs of the credit union and shall submit a report of that audit to the board of directors and a summary of that report to the members at the next annual meeting of the credit union. It shall make or cause to be made such supplementary audits or examinations as it deems necessary or as are required by the director or by the board of directors, and submit reports of these supplementary audits to the board of directors.

(2) The supervisory committee shall cause the accounts of the members to be verified with the records of the credit union from time to time, and not less frequently than every two (2) years.

History: En. 14-636 by Sec. 36, Ch. 38,  
L. 1975.

**14-637. Suspension and removal of officials.** (1) The supervisory committee by a unanimous vote may suspend any member of the credit committee and shall report such action to the board of directors for appropriate action.

(2) The supervisory committee by a unanimous vote may suspend any officer or member of the board of directors until the next members' meeting, which shall be held not less than seven (7) nor more than twenty-one (21) days after such suspension. At such meeting the suspension shall be acted upon by the members.

(3) Any member of the supervisory committee may be removed by the board of directors for failure to perform his duties in accordance with this act, the articles of incorporation, or the bylaws.

History: En. 14-637 by Sec. 37, Ch. 38,  
L. 1975.

**14-638. Calling of special meeting.** The supervisory committee by a majority vote may call a special meeting of the members to consider any violation of this act, the credit union's charter or bylaws, or any practice

of the credit union deemed by the supervisory committee to be unsafe or unauthorized.

**History:** En. 14-638 by Sec. 38, Ch. 38,  
L. 1975.

**14-639. Shares.** (1) The capital of a credit union consists of the payments by the members on shares.

(2) Shares may be subscribed to, paid for and transferred in such manner as the bylaws prescribe.

(3) A certificate need not be issued to denote ownership of a share in a credit union.

**History:** En. 14-639 by Sec. 39, Ch. 38,  
L. 1975.

**14-640. Dividends.** (1) At such intervals and for such periods as the board of directors may authorize, and after provision for the required reserves, the board of directors may declare dividends to be paid from the undivided earnings at such rates and upon such classes of shares as are determined by the board. Such dividends shall be paid on all paid-up shares outstanding at the close of the period for which the dividend is declared.

(2) Shares which become fully paid up during such dividend period and are outstanding at the close of the period shall be entitled to a proportionate share of such dividend.

(3) Dividend credit for a month may be accrued on shares which are or become fully paid up during the first fifteen (15) days of that month.

**History:** En. 14-640 by Sec. 40, Ch. 38,  
L. 1975.

**14-641. Thrift accounts.** Christmas clubs, vacation clubs, and other thrift accounts may be operated under conditions established by the board of directors.

**History:** En. 14-641 by Sec. 41, Ch. 38,  
L. 1975.

**14-642. Minors' accounts.** Shares may be issued to a minor who may withdraw the shares including the dividends and interest thereon. Share payments made by a minor and withdrawals thereof by the minor shall be valid in all respects. For such purposes a minor is deemed of full age.

**History:** En. 14-642 by Sec. 42, Ch. 38,  
L. 1975.

**14-643. Joint accounts.** (1) A member may designate any person or persons to hold shares and thrift club accounts with him in joint tenancy with the right of survivorship, but no joint tenant, unless a member in his own right, shall be permitted to vote, obtain loans, or hold office or be required to pay an entrance or membership fee.

(2) Payment of part or all of such accounts to any of the joint tenants shall, to the extent of such payment, discharge the liability to all.

History: En. 14-643 by Sec. 43, Ch. 38,  
L. 1975.

**14-644. Trust accounts.** (1) Shares may be issued in the name of a member in trust for a beneficiary, including a minor, but no beneficiary, unless a member in his own right, shall be permitted to vote, obtain loans, hold office or be required to pay an entrance or membership fee.

(2) Payment of part or all of such shares to such member shall, to the extent of such payment, discharge the liability of the credit union to the member and the beneficiary, and the credit union shall be under no obligation to see the application of such payment.

(3) In the event of the death of the member, and if shares are so issued or held and the credit union has been given no other written notice of the existence or terms of any trust, such shares and any dividends or interest thereon shall be paid to the beneficiary.

History: En. 14-644 by Sec. 44, Ch. 38,  
L. 1975.

**14-645. Liens.** The credit union shall have a lien on the shares and accumulated dividends or interest of a member in his individual, joint or trust account, for any sum past due the credit union from said member or for any loan endorsed by him.

History: En. 14-645 by Sec. 45, Ch. 38,  
L. 1975.

**14-646. Dormant accounts.** (1) If a credit union is unable to contact a member, beneficiary or other person via first class mail at the last address shown on the records of the credit union, and if such inability continues for a period of more than five (5) years, all shares, accounts, dividends, interest and other sums due or standing in the name of such member, beneficiary or other person may, by action of the board of directors, be segregated, and thereafter no dividends or interest will accrue thereto.

(2) The member may reclaim any such sums by proper administrative or judicial proceedings or in accordance with the Uniform Disposition of Unclaimed Property Act.

(3) This section does not apply to shares, accounts, dividends, interest and other sums due to or standing in the name of two (2) or more persons unless the credit union is unable to contact any such persons in the manner and during the period specified in subsection (1).

History: En. 14-646 by Sec. 46, Ch. 38,  
L. 1975.

**14-647. Reduction in shares.** (1) Whenever the losses of any credit union, resulting from a depreciation in value of its loans or investments or otherwise, exceed its undivided earnings and reserve fund so that the estimated value of its assets is less than the total amount due the shareholders, the credit union may by a majority vote of the entire member-



ship order a reduction in the shares of each of its shareholders to divide the loss proportionately among the members.

(2) If the credit union thereafter realizes from such assets a greater amount than was fixed by the order of reduction, such excess shall be divided proportionately among the shareholders whose assets were reduced, but only to the extent of such reduction.

History: En. 14-647 by Sec. 47, Ch. 38,  
L. 1975.

**14-648. Purposes, terms, and interest rate.** A credit union may loan to members for such purpose and upon such security and terms as the credit committee, credit manager, or loan officer approves, at rates of interest not exceeding one [and] one-quarter per cent ( $1\frac{1}{4}\%$ ) per month on the unpaid monthly balances.

History: En. 14-648 by Sec. 48, Ch. 38,  
L. 1975.

**14-649. Application.** Every application for a loan shall be made in writing upon a form, which the credit committee, credit manager, or loan officer prescribes. The application shall state the purpose for which the loan is desired, and the security, if any, offered. Each loan shall be evidenced by a written document.

History: En. 14-649 by Sec. 49, Ch. 38,  
L. 1975.

**14-650. Loan limit.** No loan shall be made to any member in an aggregate amount in excess of ten per cent (10%) of the credit union's total assets.

History: En. 14-650 by Sec. 50, Ch. 38,  
L. 1975.

**14-651. Security.** In addition to generally accepted types of security, the endorsement of a note by a surety, comaker or guarantor, or assignment of shares of wages, in a manner consistent with the laws of this state, shall be deemed security within the meaning of this act. The adequacy of any security shall be determined by the credit committee, credit manager, or loan officer, subject to this act and the bylaws.

History: En. 14-651 by Sec. 51, Ch. 38,  
L. 1975.

**14-652. Installments.** A member may receive a loan in installments, or in one sum, and may pay the whole or any part of his loan on any day on which the office of the credit union is open for business.

History: En. 14-652 by Sec. 52, Ch. 38,  
L. 1975.

**14-653. Line of credit.** The credit committee or credit manager may approve in advance upon their own motion or upon application by a member, a line of credit, and advances may be granted to each member within the limit of such extension of credit. Where a line of credit has been

approved, no additional loan applications are required as long as the aggregate obligation does not exceed the limit of such extension of credit.

History: En. 14-653 by Sec. 53, Ch. 38,  
L. 1975.

**14-654. Other loan programs.** (1) A credit union may participate in loans to credit union members jointly with other credit unions, corporations, or financial organizations.

(2) A credit union may participate in guaranteed loan programs of the federal and state government.

(3) A credit union may purchase the conditional sales contracts, notes and similar instruments of its members.

History: En. 14-654 by Sec. 54, Ch. 38,  
L. 1975.

**14-655. Loans to officials.** (1) A credit union may make loans to its directors, employees, loan officers, credit manager, and to members of its supervisory and credit committees, provided that:

(a) the loan complies with all lawful requirements under this act with respect to loans to other borrowers and is not on terms more favorable than those extended to other borrowers; and

(b) any such loan or aggregate of loans to any one director or committee member which exceeds two thousand five hundred dollars (\$2,500) plus pledged shares must be reported to the board of directors. Loans to directors and committee members may not exceed an aggregate of twenty per cent (20%) of unimpaired capital of the credit union.

(2) A credit union may permit directors, employees, loan officers, credit manager, and members of its supervisory and credit committees to act as comakers, guarantors or endorers of loans to other members, except when any such loan standing alone or when added to any outstanding loan or loans to the comaker, guarantor or endorser exceeds two thousand five hundred dollars (\$2,500), approval of the board of directors is required.

History: En. 14-655 by Sec. 55, Ch. 38,  
L. 1975.

**14-656. Insurance for members.** (1) A credit union may purchase or make available insurance for its members in amounts related to their respective ages, shares, or loan balances, or to any combination of them.

History: En. 14-656 by Sec. 56, Ch. 38, Compiler's Notes

L. 1975. This section contained no subsection (2).

**14-657. Liability insurance for officers.** A credit union may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the credit union, or who is or was serving at the request of the credit union as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity or arising out of such person's status

as such, whether or not the credit union would have the power to indemnify such person against such liability.

History: En. 14-657 by Sec. 57, Ch. 38,  
L. 1975.

**14-658. Share insurance.** (1) Not later than January 1, 1976, each credit union shall apply for insurance on share accounts under the provisions of Title II of the National Credit Union Act. A credit union which has been denied a commitment for insurance of its share accounts shall either dissolve, merge with another credit union which is insured under Title II of the National Credit Union Act, or apply in writing within thirty (30) days of denial to the director of the department of business regulation for additional time to obtain an insurance commitment.

(2) The director of the department of business regulation shall grant additional time for the credit union to obtain the insurance commitment upon satisfactory evidence that the credit union has made or is making a substantial effort to achieve the conditions precedent to issuance of the commitment. Additional time or times shall not extend later than January 1, 1978.

(3) The director of the department of business regulation shall make available reports of condition and examination reports to the administrator of the National Credit Union Administration and may accept any report of examination made on behalf of such administrators. The director may appoint the administrator of the National Credit Union Administration as liquidating agent of an insured credit union.

History: En. 14-658 by Sec. 58, Ch. 38,  
L. 1975.

**14-659. Investment of funds.** Funds not used in loans to members may be invested:

(1) in securities, obligations or other instruments of or issued by or fully guaranteed as to principal and interest by the United States of America, or any agency thereof, or in any trust or trusts established for investing directly or collectively in the same;

(2) in general obligations of any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the several territories organized by Congress, or any political subdivisions thereof;

(3) in certificates of deposit or passbook type accounts issued by a state or national bank, mutual savings bank, building and loan association, or savings and loan association;

(4) in loans to or in shares or deposits of other credit unions;

(5) in the capital shares, obligations, or preferred stock issues of any agency or association organized either as a stock company, mutual association or membership corporation, provided the membership or stockholdings, as the case may be, of such agency or association are primarily confined or restricted to credit unions, or organizations of credit unions, and provided the purposes for which such agency or association is organized are designed primarily to service or otherwise assist credit union operations;



(6) in shares of a co-operative society organized under the laws of this state or of the laws of the United States in the total amount not exceeding ten per cent (10%) of the shares and surplus of the credit union;

(7) in loans to any credit union association or corporation, national or state, of which the credit union is a member, except that such investments shall be limited to two per cent (2%) of the assets of the credit union.

**History:** En. 14-659 by Sec. 59, Ch. 38,  
L. 1975.

**14-660. Transfers to regular reserve.** (1) Immediately before the payment of each dividend, the gross earnings of the credit union shall be determined. From this amount, there shall be set aside sums as a regular reserve for contingencies in accordance with the following schedule:

(a) ten per cent (10%) of gross income until the regular reserve equals five per cent (5%) of the total of outstanding loans and risk assets; then

(b) seven per cent (7%) of gross income until the regular reserve equals six per cent (6%) of the total of outstanding loans and risk assets; then

(c) five per cent (5%) of gross income until the regular reserve equals seven per cent (7%) of the total of outstanding loans and risk assets.

(2) Whenever the regular reserve falls below seven per cent (7%), six per cent (6%), or five per cent (5%) of the total outstanding loans and risk assets, as the case may be, it shall be replenished by regular contributions in such amounts as are needed to maintain the reserve goals of five per cent (5%), six per cent (6%), or seven per cent (7%).

(3) Any entrance fees, charges and transfer fees shall, after payment of organization expense, be added to the regular reserve.

**History:** En. 14-660 by Sec. 60, Ch. 38,  
L. 1975.

**14-661. Use of regular reserve.** The regular reserve shall belong to the credit union and shall be used to meet losses except those resulting from an excess of expenses over income and shall not be distributed except on liquidation of the credit union, or in accordance with a plan approved by the director of the department of business regulation.

**History:** En. 14-661 by Sec. 61, Ch. 38,  
L. 1975.

**14-662. Risk assets defined.** For the purpose of establishing the reserves required, all assets except the following shall be considered risk assets:

- (1) cash on hand;
- (2) deposits and shares in federal or state banks, savings and loan associations, and credit unions;

(3) assets which are insured, fully guaranteed as to principal and interest, or due from the United States government, its agencies, the federal national mortgage association, or the government national mortgage association;

(4) loans to other credit unions;

(5) loans to students insured under the provision of Title IV, part B of the Higher Education Act of 1965, or similar state insurance programs;

(6) loans insured under Title I of the National Housing Act by the federal housing administration;

(7) shares in central credit unions organized under this act or of any other state act or of the Federal Credit Union Act;

(8) common trust investments which deal in investments authorized by this act;

(9) prepaid expenses;

(10) accrued interest on nonrisk investments;

(11) furniture and equipment; and

(12) land and buildings.

History: En. 14-662 by Sec. 62, Ch. 38,  
L. 1975.

**14-663. Special reserves.** In addition to such regular reserve, special reserves to protect the interest of members shall be established:

(1) when required by regulation; or

(2) when found by the board of directors of the credit union or by the director of the department of business regulation, in any special case, to be necessary for that purpose.

History: En. 14-663 by Sec. 63, Ch. 38,  
L. 1975.

**14-664. Suspension.** (1) If it appears that any credit union is bankrupt or insolvent, or that it has willfully violated this act, or is operating in an unsafe or unsound manner, the director of the department of business regulation shall issue an order temporarily suspending the credit union's operations for not less than thirty (30) nor more than sixty (60) days. The board of directors shall be given notice by registered mail of such suspension, which notice shall include a list of the reasons for such suspension, and/or a list of the specific violations of this act.

(2) Upon receipt of such suspension notice, the credit union shall cease all operations, except those authorized by the director. The credit union shall then file with the director a reply to the suspension notice, and may request a hearing to present a plan of corrective actions proposed if it desires to continue operations. The board may request that the credit union be declared insolvent and a liquidating agent be appointed.

(3) Upon receipt from the suspended credit union of evidence that the conditions causing the order of suspension have been corrected, the director may revoke the suspension notice and permit the credit union to resume normal operations.

(4) If the director, after issuing notice of suspension and providing an opportunity for a hearing, rejects the credit union's plan to continue

operations, he may issue a notice of involuntary liquidation and appoint a liquidating agent. The credit union may request the appropriate court to stay execution of such action. Involuntary liquidation may not be ordered prior to the conclusion of suspension procedures outlined in this section.

(5) If, within the suspension period, the credit union fails to answer the suspension notice or request a hearing, the director may then revoke the credit union's charter, appoint a liquidating agent and liquidate the credit union.

**History:** En. 14-664 by Sec. 64, Ch. 38,  
L. 1975.

**14-665. Liquidation.** (1) A credit union may elect to dissolve voluntarily and liquidate its affairs in the manner prescribed in this section and the applicable Montana corporation laws.

(2) The board of directors shall adopt a resolution recommending the credit union be dissolved voluntarily and directing that the question of liquidation be submitted to the members.

(3) Within 10 days after the board of directors decides to submit the question of liquidation to the members, the president shall notify the director of the department of business regulation thereof in writing, setting forth the reasons for the proposed action. Within 10 days after the members act on the question of liquidation, the president shall notify the director in writing as to whether or not the members approved the proposed liquidation.

(4) As soon as the board of directors decides to submit the question of liquidation to the members, payment on shares, withdrawal of shares, making any transfer of shares to loans and interest, making investments of any kind, and granting loans shall be suspended pending action by members on the proposal to liquidate. On approval by the members of such proposal, all such business transactions shall be permanently discontinued. Necessary expenses of operation shall, however, continue to be paid on authorization of the board of directors or liquidating agent during the period of liquidation.

(5) For a credit union to enter voluntary liquidation, approval by a majority of the members in writing or by a two-thirds majority of the members present at a regular or special meeting of the members is required. If authorization for liquidation is to be obtained at a meeting of the members, notice in writing shall be given to each member, by first-class mail, at least 10 days prior to such meeting.

(6) A liquidating credit union shall continue in existence for the purpose of discharging its debts, collecting and distributing its assets, and doing all acts required in order to wind up its business and may sue and be sued for the purpose of enforcing such debts and obligations until its affairs are fully adjusted.

(7) The board of directors or the liquidating agent shall use the assets of the credit union to pay:

(a) expenses incidental to liquidating, including any surety bond that may be required;

(b) any liability due nonmembers; and



(c) special purpose thrift accounts as provided in this act.

Assets then remaining shall be distributed to the members proportionately to the shares held by each member as of the date dissolution was voted.

(8) As soon as the board of directors of the liquidating agent determines that all assets from which there is a reasonable expectancy of realization have been liquidated and distributed as set forth in this section, he shall execute a certificate of dissolution on a form prescribed by the department and file the same with the department, together with all pertinent books and records of the liquidating credit union, whereupon such credit union shall be dissolved.

**History:** En. 14-665 by Sec. 65, Ch. 38, L. 1975; amd. Sec. 33, Ch. 71, L. 1977.

by the department" in the middle of subsection (8); and made minor changes in phraseology, punctuation and style.

#### Amendments

The 1977 amendment deleted "of business regulation" after "form prescribed

**14-666. Merger.** (1) Any credit union may with the approval of the director of the department of business regulation, and compliance with the applicable Montana corporation law, merge with another credit union under the existing charter of the other credit union, pursuant to any plan agreed upon by the majority of each board of directors of each credit union joining in the merger, and approved by the affirmative vote of a majority of the members of the merging credit union present at a meeting of its members duly called for such purpose.

(2) After agreement by the directors and approval by the members of the merging credit union, the president and secretary of the credit union shall execute a certificate of merger, which shall set forth all of the following:

(a) the time and place of the meeting of the board of directors at which the plan was agreed upon;

(b) the vote in favor of the adoption of the plan;

(c) a copy of the resolution or other action by which the plan was agreed upon;

(d) the time and place of the meeting of the members at which the plan agreed upon was approved; and

(e) the vote by which the plan was approved by the members.

(3) Such certificate and a copy of the plan of merger agreed upon shall be forwarded to the director, certified by him, and returned to both credit unions within thirty (30) days.

(4) Upon return of the certificate from the director, all property rights, and members' interest of the merged credit union shall vest in the surviving credit union without deed, endorsement or other instrument of transfer, and all debts, obligations and liabilities of the merged credit union shall be deemed to have been assumed by the surviving credit union under whose charter the merger was effected. The rights and privileges of the members of the merged credit union shall remain intact.

(5) This section shall be construed whenever possible to permit a credit union chartered under any other act to merge with one chartered under this act, or to permit one chartered under this act to merge with one chartered under any other act.

History: En. 14-666 by Sec. 66, Ch. 38,  
L. 1975.

**14-667. Conversion of charter.** (1) A credit union chartered under the laws of this state may be converted to a credit union chartered under the laws of any other state or under the laws of the United States, subject to regulations issued by the director of the department of business regulation.

(2) A credit union chartered under the laws of the United States or of any other state may convert to a credit union chartered under the laws of this state. To effect such a conversion, a credit union must comply with all the requirements of the jurisdiction under which it was originally chartered and the requirements of the director of the department of business regulation and file proof of such compliance with said director.

History: En. 14-667 by Sec. 67, Ch. 38,  
L. 1975.

**14-668. Organization.** Any central credit union may be organized and operated under this act and subject to all such provisions not inconsistent with this article. Such credit union shall use the term "central" in its official name.

History: En. 14-668 by Sec. 68, Ch. 38,  
L. 1975.

**14-669. Membership.** Membership in such central credit union may include, but not be limited to:

(1) credit unions organized and operating under this act or under any other credit union act;

(2) officers, directors, committee members and employees of such credit unions; officials and employees of any association of credit unions; and employees of federal or state government agencies responsible for the supervision of credit unions in this state;

(3) organizations and associations of those persons or organizations enumerated in subsections (1) and (2);

(4) employees of an employer with insufficient numbers to form or conduct the affairs of a separate credit union;

(5) persons in the field of membership of liquidated credit unions or of credit unions which have entered into or are about to enter into voluntary or involuntary liquidation proceedings; or

(6) members of the immediate families of all members qualified above.

History: En. 14-669 by Sec. 69, Ch. 38,  
L. 1975.

**14-670. Voting representative.** Each credit union becoming a member of such central credit union may designate one (1) person to be its voting

representative in the central credit union, which person shall be designated by the board of directors of the member credit union. Such voting representative shall be eligible to hold office in the central credit union as if such person were himself a member of the central credit union.

History: En. 14-670 by Sec. 70, Ch. 38,  
L. 1975.

**14-671. Additional rights and powers.** (1) A central credit union shall have all of the rights and powers of any other credit union organized under this act and the additional rights and power specified in this section, notwithstanding any limitations or restrictions found elsewhere in this act.

(2) A central credit union may make loans to other credit unions; purchase shares of other credit unions; and obtain or acquire the assets and liabilities of any credit union operating in this state which enters into liquidation.

(3) A central credit union may invest in and grant loans to associations of credit unions, central funds of credit unions, or organizations chartered to provide service to credit unions.

(4) A central credit union may borrow and accept money from any source, and issue notes or debentures.

(5) A central credit union with corporate shareholdings equal to or in excess of 95% of its total assets may, by vote of its board of directors, elect exemption of insurance on share accounts under the provisions of Title II of the National Credit Union Act.

History: En. 14-671 by Sec. 71, Ch. 38,      Amendments  
L. 1975; amd. Sec. 1, Ch. 111, L. 1977.

The 1977 amendment added subsection (5); and made a minor change in punctuation.

**14-672. Taxation.** All credit unions organized under this or any other credit union act shall have the same immunity from state and local taxation that federal credit unions have from time to time under the laws of the United States.

History: En. 14-672 by Sec. 72, Ch. 38,  
L. 1975.

**14-673. Stock transfer taxes.** The shares of any credit union shall not be subject to stock transfer taxes, either when issued or when transferred from one member to another.

History: En. 14-673 by Sec. 73, Ch. 38,  
L. 1975.

**14-674. Participation in government programs.** The participation by a credit union in any government program providing unemployment, social security, old age pension or other benefits shall not be deemed a waiver of the taxation exemption hereby granted.

History: En. 14-674 by Sec. 74, Ch. 38,  
L. 1975.

**14-675. Instruction in schools.** With the consent and under the direction of the state superintendent of public instruction, the organization, man-



agement, and extension of credit unions as set forth in this act may be taught in the public schools of this state.

History: En. 14-675 by Sec. 75, Ch. 38,  
L. 1975.

**14-676. Additional powers of director.** The director may authorize any credit union to engage in any activity in which such credit union could engage were it operating as a federal chartered credit union at the time such authority is granted. Such powers shall include but not by way of limitation, the power to do any act, and own, possess and carry as assets, property of such character including stocks, bonds or other debentures which, at the time the authority is granted, are authorized under federal laws and regulations for transactions by federal credit unions notwithstanding any restrictions elsewhere contained in the statutes of the state of Montana except that the director may not charter a credit union not having a common bond of membership as defined in section 15 [14-615] of this act. Upon receipt of a written request from any state chartered credit union, the director shall exercise such power by the issuance of a special order therefor if he deems it reasonably required to preserve and protect the welfare of such an institution and promote the general economy of this state.

History: En. 14-676 by Sec. 76, Ch. 38,  
L. 1975.

**14-677. Severability.** It is the intent of the legislature that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

History: En. 14-677 by Sec. 77, Ch. 38,  
L. 1975.

**Repealing Clause**

Section 78 of Ch. 38, Laws 1975 read  
"Sections 14-130 through 14-158, R. C. M.  
1947, are repealed."



## TITLE 15—CORPORATIONS

### Chapter

- 20. Securities Act of Montana, 15-2006, 15-2011, 15-2014, 15-2016.
- 21. Professional service corporations, 15-2105.
- 22. Montana Business Corporation Act, 15-2202, 15-2212, 15-2226, 15-2236, 15-2272, 15-2274, 15-2285, 15-2290, 15-2295, 15-2299, 15-22-104, 15-22-109, 15-22-110, 15-22-112, 15-22-119, 15-22-121, 15-22-122.
- 23. Montana Nonprofit Corporation Act, 15-2304, 15-2304.1, 15-2354, 15-2359, 15-2383, 15-2384, 15-2398.
- 24. Montana Religious Corporation Sole Act, 15-2408.
- 25. Business trusts, 15-2504.
- 26. Montana Development Credit Corporation Act, 15-2601 to 15-2618.
- 27. Involuntary dissolution of corporations, 15-2701 to 15-2706.

## CHAPTER 20—SECURITIES ACT OF MONTANA

### Section

- 15-2006. Registration of broker-dealers, salesmen, and investment advisers.
- 15-2011. General provisions regarding registration of securities.
- 15-2014. Exempt transactions.
- 15-2016. Fees.

**15-2006. Registration of broker-dealers, salesmen, and investment advisers.** (1) It is unlawful for any person to transact business in this state as a broker-dealer or salesman, except in transactions exempt under 15-2014, unless he is registered under this chapter. It is unlawful for any person to transact business in this state as an investment adviser unless:

- (a) he is so registered under this chapter;
- (b) he is registered as a broker-dealer under this chapter; or
- (c) his only clients in this state are investment companies as defined in the Investment Company Act of 1940 or insurance companies.

(2) A broker-dealer or a salesman, acting as an agent for an issuer, or acting as an agent for a broker-dealer in the offer or sale of securities for an issuer, or an investment adviser may apply for registration by filing with the commissioner an application in such form as the commissioner prescribes and payment of the fee prescribed in 15-2016. Except for persons in the employ of brokerage firms governed by the regulations of the securities and exchange commission, all salesmen must be legal residents of this state and must have actually resided in this state for a period of at least 1 year next prior to the date of application for registration. The commissioner may, upon request and for good cause shown by an applicant, waive the residency requirement. Salesmen shall also file with the commissioner a bond of a surety company duly authorized to transact business in this state. The bond shall be in the sum of \$5,000, payable to the state of Montana and conditioned upon the faithful compliance with the provisions of this chapter, and shall provide that upon failure to so comply, the salesman shall be liable to any and all persons who may suffer loss by reason thereof.

(3) The application shall contain whatever information the commissioner requires.



(4) If no denial order is in effect and no proceeding is pending under subsection (8) of this section, registration becomes effective at noon of the 30th day after an application is filed. The commissioner may specify an earlier effective date, and he may by order defer the effective date for an additional 60 days. The effective day after the filing of any amendment shall be noon of the 30th day thereafter unless otherwise accelerated by the commissioner.

(5) Registration of a broker-dealer, salesman, or investment adviser shall be effective until March 1 following such registration and may be renewed. The registration of a salesman is not effective during any period when he is not associated with an issuer or a registered broker-dealer specified in his application. When a salesman begins or terminates a connection with an issuer or registered broker-dealer, the salesman and the issuer or broker-dealer shall promptly notify the commissioner.

(6) Registration of a broker-dealer, salesman, or investment adviser may be renewed by filing with the commissioner prior to the expiration thereof an application containing such information as the commissioner may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, salesman, or investment adviser filed with the commissioner by the applicant, payment of the prescribed fee and, in the case of a broker-dealer, a financial statement showing the financial condition of such broker-dealer as of a date within 90 days. A registered broker-dealer or investment adviser may file an application for registration of a successor, to become effective upon approval of the commissioner.

(7) Every registered broker-dealer and investment adviser shall make and keep such accounts and other records, except with respect to securities exempt under 15-2013(1), as may be prescribed by the commissioner. All records so required shall be preserved for 3 years unless the commissioner prescribes otherwise for particular types of records. All the records of a registered broker-dealer or investment adviser are subject at any time or from time to time to such reasonable periodic, special, or other examinations, within or without this state, by representatives of the commissioner, as the commissioner considers necessary or appropriate in the public interest or for the protection of investors.

(8) The commissioner may by order deny, suspend, or revoke registration of any broker-dealer, salesman, or investment adviser if he finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director:

(a) has filed an application for registration under this section which, as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) has willfully violated or willfully failed to comply with any provision of this chapter or a predecessor law or any rule or order under this chapter or a predecessor law;

(c) has been convicted of any misdemeanor involving a security or any aspect of the securities business or any felony;

(d) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(e) is the subject of an order of the commissioner denying, suspending, or revoking registration as a broker-dealer, salesman, or investment adviser;

(f) is the subject of an order entered within the past 5 years by the securities administrator of any other state or by the federal securities and exchange commission denying or revoking registration as a broker-dealer or salesman or the substantial equivalent of those terms as defined in this chapter or is the subject of an order of the federal securities and exchange commission suspending or expelling him from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or is the subject of a United States post office fraud order; but:

(i) the commissioner may not institute a revocation or suspension proceeding under this subsection (f) more than 1 year from the date of the order relied on; and

(ii) he may not enter any order under this subsection (f) on the basis of an order unless that order was based on facts which would currently constitute a ground for an order under this section;

(g) has engaged in dishonest or unethical practices in the securities business;

(h) is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature; but the commissioner may not enter an order against a broker-dealer or investment adviser under this subsection (h) without a finding of insolvency as to the broker-dealer or investment adviser;

(i) has not complied with a condition imposed by the commissioner under subsection (8) of this section, or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business; or

(j) has failed to pay the proper filing fee; but the commissioner may enter only a denial order under this subsection (j), and he shall vacate any such order when the deficiency has been corrected. The commissioner may by order summarily postpone or suspend registration pending final determination of any proceeding under this section.

(9) Upon the entry of the order under subsection (8) of this section, the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a salesman, that it has been entered and of the reasons therefor and that if requested by the applicant or registrant within 15 days after the receipt of the commissioner's notification the matter will be promptly set down for hearing. If no hearing is requested within 15 days and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may affirm, modify, or vacate the order.

(10) If the commissioner finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a

broker-dealer, investment adviser, or salesman, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the commissioner may by order cancel the registration or application.

**History:** En. Sec. 6, Ch. 251, L. 1961; amd. Sec. 1, Ch. 265, L. 1977; amd. Sec. 1, Ch. 275, L. 1977.

#### Amendments

Chapter 265, Laws of 1977, inserted "offer or" before "sale" near the beginning of subsection (2); deleted "as hereinafter provided" at the end of the first sentence of subsection (5); and made minor changes in phraseology, punctuation and style.

Chapter 275, Laws of 1977, inserted the third sentence in subsection (2) relating to waiver of the residency requirement.

#### Compiler's Notes

This section was amended twice in 1977, once by Ch. 265 and once by Ch. 275. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

**15-2011. General provisions regarding registration of securities.** (1) and (2) \* \* \* [Same as parent volume.]

(3) When securities are registered by notification, co-ordination, or qualification, they may be offered and sold by the issuer, any other person on whose behalf they are registered or by any registered broker-dealer. Every registration shall remain effective until revoked by the commissioner or until terminated upon request of the registrant with the consent of the commissioner; however, said registration shall be automatically suspended upon a stop order or suspension proceedings being instituted by the securities and exchange commission relative to said securities, and shall continue suspended so long as such proceedings are pending and until the registration or filing with the securities and exchange commission is effective. All outstanding securities of the same class as a currently registered security are considered to be registered for the purpose of any nonissuer transaction. A registration statement which has become effective may not be withdrawn for one (1) year from its effective date if any securities of the same class are outstanding.

(4) \* \* \* [Same as parent volume.]

**History:** En. Sec. 11, Ch. 251, L. 1961; amd. Sec. 1, Ch. 71, L. 1963; amd. Sec. 1, Ch. 150, L. 1977.

#### Amendments

The 1977 amendment inserted "currently" before "registered security" in the third sentence of subsection (3).

**15-2014. Exempt transactions.** Except as hereinafter in this section expressly provided, sections 15-2006 through 15-2012 shall not apply to any of the following transactions:

(1) to (7). \* \* \* [Same as parent volume.]

(8) Any transaction pursuant to an offer directed by the offerer to not more than ten (10) persons (other than those designated in subsection (7)) in this state during any period of twelve (12) consecutive months, whether or not the offerer or any of the offerees is then present in this state, if (a) the seller reasonably believes that all the buyers are purchasing for investment, and (b) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer, provided, however, that a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and



exchange commission under the Federal Securities and Exchange Act of 1933 as amended.

(9) to (13). \* \* \* [Same as parent volume.]

The commissioner may by order deny or revoke the exemption specified in subsection (2) with respect to a specific security. Upon the entry of such an order, the commissioner shall promptly notify all registered broker-dealers that it has been entered and of the reasons therefor and that within fifteen (15) days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order under this subsection may operate retroactively. No person may be considered to have violated this act by reason of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known of the order.

History: En. Sec. 14, Ch. 251, L. 1961;      Amendments  
amd. Sec. 1, Ch. 185, L. 1973.

The 1973 amendment added the proviso to the end of subsection (8).

**15-2016. Fees.** The following fees shall be paid in advance under the provisions of this act:

(1) For the registration of securities by notification or co-ordination or qualification, there shall be paid to the commissioner for the first year of registration a registration fee of one hundred dollars (\$100.00) for the first one hundred thousand dollars (\$100,000.00) of initial issue, or portion thereof in this state, based on offering price; plus one-twentieth (1/20th) of one per cent (1%) for any excess over one hundred thousand dollars (\$100,000.00), with a maximum of one thousand dollars (\$1,000.00).

Each year thereafter that a registration remains in effect for securities with respect to which reports are required to be filed under subsection (4)(a) of section 15-2011, an additional registration fee shall be paid to the commissioner to be computed at one-twentieth (1/20th) of one per cent (1%) of the aggregate offering price of such securities which are to be offered in this state during that year, even though the maximum fee was paid the preceding year. In no event shall the additional registration fee be less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00). The registration statement for such securities may be amended to increase the amount of securities to be offered. When an application for registration of securities is denied or withdrawn the commissioner shall retain the fee.

(2) For filing an annual statement, the fee shall be ten dollars (\$10.00).

(3) For registration of a broker-dealer or investment adviser, the fee shall be \$200 for original registration and \$200 for each annual renewal thereof. When an application is denied or withdrawn the commissioner shall retain the fee.

(4) For registration of a salesman, the fee shall be \$25 for original registration with each employer and \$25 for each annual renewal. When an

application is denied or withdrawn the commissioner shall retain the fee.

(5) For certified copies of any documents filed with the commissioner, the fee shall be the cost to the department.

(6) For a request for an exemption or exception to the provisions of this chapter, the fee shall be \$25.

History: En. Sec. 16, Ch. 251, L. 1961;  
amd. Sec. 1, Ch. 242, L. 1977.

(1); increased the registration and renewal fees in subsection (3) from \$100 to \$200; deleted "one-half ( $\frac{1}{2}$ ) of" before "the fee" at the end of subsections (3) and (4); increased the registration and renewal fees in subsection (4) from \$10 to \$25; and added subsection (6).

#### Amendments

The 1977 amendment deleted "fifty dollars (\$50.00) of" before "the fee" at the end of the second paragraph of subsection

### CHAPTER 21—PROFESSIONAL SERVICE CORPORATIONS

#### Section

15-2105. Permissible purposes for incorporation.

**15-2105. Permissible purposes for incorporation.** An individual or group of individuals licensed or otherwise authorized to render the same professional services within this state may organize and become a shareholder or shareholders of a professional corporation for pecuniary profit under the provisions of Title 15, chapter 22, for the sole and specific purpose of rendering the same and specific professional service.

History: En. Sec. 7, Ch. 161, L. 1963;  
amd. Sec. 9, Ch. 62, L. 1977.

#### Amendments

The 1977 amendment substituted "Title 15, chapter 22" for "the Corporation Act of Montana" near the end of the section; and made minor changes in phraseology.

### CHAPTER 22—MONTANA BUSINESS CORPORATION ACT

#### Section

- |            |  |
|------------|--|
| 15-2202.   | <b>Definitions.</b>  |
| 15-2212.   | Change of registered office or registered agent.                             |
| 15-2226.   | Meetings of shareholders.  |
| 15-2236.   | Vacancies—removal of directors.  |
| 15-2272.   | Sale of assets other than in regular course of business.                     |
| 15-2274.   | Rights of dissenting shareholders.   |
| 15-2285.   | Articles of dissolution—tax clearance certificate.                           |
| 15-2290.   | Jurisdiction of court to liquidate assets and business of corporation.       |
| 15-2295.   | Decree of involuntary dissolution.   |
| 15-2299.   | Admission of foreign corporation.  |
| 15-22-104. | Filing of application for certificate of authority.                          |
| 15-22-109. | Amendment to articles of incorporation of foreign corporation.               |
| 15-22-110. | Merger of foreign corporation authorized to transact business in this state. |
| 15-22-112. | Withdrawal of foreign corporation.   |
| 15-22-119. | Filing of annual report of domestic and foreign corporations.                |
| 15-22-121. | Fees for filing documents and issuing certificates.                          |
| 15-22-122. | Miscellaneous charges.   |

**15-2202. Definitions.** As used in this act, unless the context otherwise requires, the term:

(a) to (o). \* \* \* [Same as parent volume.]

(p) "Registered agent" means the person appointed as an agent of the corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served.

History: En. Sec. 2, Ch. 300, L. 1967;  
amd. Sec. 1, Ch. 152, L. 1969.

#### Amendments

The 1969 amendment added subdivision (p).

### 15-2204. General powers.

#### Eminent Domain Power

Legislature, under this section, has empowered utility companies to acquire prop-

erty by eminent domain. *Montana Power Co. v. Bokma*, 153 M 390, 457 P 2d 769.

**15-2210. Renewal of registered name.** A corporation which has in effect a registration of its corporate name, may renew such registration from year to year by annually filing an application for renewal setting forth the facts required to be set forth in an original application for registration and a certificate of good standing as required for the original registration and by paying a fee of ten dollars (\$10). A renewal application may be filed between October 1 and December 31 in each year, and shall extend the registration for the following calendar year.

#### Compiler's Notes

This section is reprinted to add a dollar sign (\$) omitted in the parent volume.

### 15-2211. Registered office and registered agent.

#### Venue

This section does not grant to a foreign corporation residency in a particular county of this state for venue purposes

by reason of the residency of its statutory agent for the service of process therein. *Foley v. General Motors Corp.*, 159 M 469, 499 P 2d 774.

**15-2212. Change of registered office or registered agent.** (1) A corporation may change its registered office or change its registered agent, or both, upon filing in the office of the secretary of state a statement setting forth:

- (a) the name of the corporation;
- (b) the address of its then registered office;
- (c) if the address of its registered office is changed, the address to which the registered office is to be changed;
- (d) the name of its then registered agent;
- (e) if its registered agent is changed, the name of its successor registered agent;
- (f) that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical;
- (g) that such change was authorized by resolution duly adopted by its board of directors.

(2) Such statement shall be executed for the corporation by any officer thereof, verified by him, and delivered to the secretary of state. If the secretary of state finds that such statement conforms to the provisions of this act, he shall, when all fees have been paid as in this act prescribed, file such statement in his office. Upon filing, the change of address of the registered office or the appointment of a new registered agent, or both, as the case may be, is effective.

(3) A registered agent of a corporation may resign as registered agent upon filing a written notice of resignation, executed in duplicate, with the



secretary of state, who shall immediately mail a copy thereof to the corporation at its registered office. The appointment of the agent shall terminate 30 days after receipt of such notice by the secretary of state.

(4) If a registered agent changes his or its business address to another place within the same county, he or it may change such address and the address of the registered office of any corporations of which he or it is registered agent by filing a statement as required above, except that it need be signed only by the registered agent and need not be responsive to (1)(e) or (1)(g) and must recite that a copy of the statement has been mailed to each such corporation.

**History:** En. Sec. 12, Ch. 300, L. 1967;  
amd. Sec. 10, Ch. 62, L. 1977.

for "country" near the beginning of subsection (4); and made minor changes in phraseology, punctuation and style.

#### **Amendments**

The 1977 amendment inserted the subsection designations; substituted "county"

**15-2226. Meetings of shareholders.** Meetings of shareholders may be held at such place, either within or without this state, as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held at the registered office of the corporation.

An annual meeting of the shareholders shall be held at such time as may be provided in the bylaws. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.

Special meetings of the shareholders may be called by the president, the board of directors, the holders of not less than one-half ( $\frac{1}{2}$ ) of all the shares entitled to vote at the meeting, or such other officers or persons as may be provided in the articles of incorporation or the bylaws.

**History:** En. Sec. 26, Ch. 300, L. 1967;  
amd. Sec. 1, Ch. 308, L. 1969.

#### **Amendments**

The 1969 amendment substituted "one-half ( $\frac{1}{2}$ )" for "one-fourth ( $\frac{1}{4}$ )" in the third paragraph.

### **15-2233. Board of directors.**

#### **Liability on Contracts**

Notwithstanding the provision of this section that the business and corporate affairs shall be managed by a board of directors, a close corporation in which the bulk of the stock was owned by the president, and the rest by his wife and son, who also served as vice-president and secretary respectively, could not avoid liability to perform an option agreement on the ground that the president and secretary had no authority to bind the corpo-

ration on such agreements without the ratification of the board of directors, which had not occurred, because (1) the officers had express or implied power to make such an agreement, (2) even if they did not, the officers were estopped to deny the option by their course of conduct, and (3) as owners of the corporation they were not entitled to rely on the corporate form to shield them from their obligations. *Hauptman v. Edwards, Inc.*, — M —, 553 P 2d 975.

**15-2236. Vacancies—removal of directors.** Any vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the board of directors. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. Any directorship to be filled by reason of an increase in the number of directors may be filled by the

board of directors for a term of office continuing only until the next election of directors by the shareholders. Any directorship to be filled by reason of the removal of one or more directors by the shareholders may be filled by election by the shareholders at the meeting at which the director or directors are removed.

At a meeting called expressly for that purpose, directors may be removed in the manner provided in this section. The entire board of directors may be removed, with or without cause, by a vote of the holders of two-thirds ( $2/3$ ) of the shares then entitled to vote at an election of directors, unless otherwise provided by the articles of incorporation or bylaws; if the corporation has fewer than one hundred (100) shareholders, the entire board of directors will be removed by a vote of a majority of the shares then entitled to vote.

If less than the entire board is to be removed, no one of the directors may be removed if the votes cast against his removal would be sufficient to elect him if then cumulatively voted at an election of the entire board of directors, or, if there be classes of directors, at an election of the class of directors of which he is a part.

**History:** En. Sec. 36, Ch. 300, L. 1967; amd. Sec. 1, Ch. 309, L. 1969.

#### Amendments

The 1969 amendment substituted "two-

thirds ( $2/3$ )" for "a majority" before "of the shares" and added "unless otherwise provided \* \* \* entitled to vote" to the second sentence of the second paragraph.

### 15-2239. Place and notice of directors' meetings.

#### Effect of Failure to Give Notice

Director of closely held corporation was estopped to assert invalidity of vote by which remaining directors elected to repurchase his shares of stock pursuant to repurchase agreement where he was notified several times during a ninety-day

period of the board's resolution to repurchase his stock and where at no time during this period did he ever object to not receiving notice of the meeting at which the resolution was passed. State ex rel. Howeth v. D. A. Davidson & Co., — M —, 517 P 2d 722.

**15-2272. Sale of assets other than in regular course of business.** A sale, lease, exchange, or other disposition of all, or substantially all, the property and assets, with or without the good will, of a corporation, if not in the usual and regular course of its business, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any other corporation, domestic or foreign, as may be authorized in the following manner:

(a) to (d). \* \* \* [Same as parent volume.]

(e) The shareholders of a corporation may, by a vote of the holders of the number of shares required to change the articles of incorporation of such corporation at a meeting duly called upon not less than thirty (30) days' notice, amend the articles of incorporation to give the board of directors general authority to sell, lease, exchange or otherwise dispose of all, or substantially all, of the property and assets, with or without the good will, of a corporation, upon such conditions, and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any other corporation, domestic or foreign, as shall be authorized by the board of directors.



**History:** En. Sec. 72, Ch. 300, L. 1967; Amendments  
amd. Sec. 1, Ch. 125, L. 1969.

The 1969 amendment added subdivision  
(e).

**15-2274. Rights of dissenting shareholders.** (1) A shareholder electing to exercise such right of dissent shall file with the corporation, prior to or at the meeting of shareholders at which the proposed corporate action is submitted to a vote, a written objection to the proposed corporate action. If the proposed corporate action is approved by the required vote and such shareholder does not vote in favor thereof, he may, within 10 days after the date on which the vote was taken, or in the case of a merger without shareholder vote within 15 days after the plan of merger is mailed to him, make written demand on the corporation or, in the case of a merger or consolidation, on the surviving or new corporation, domestic or foreign, for payment of the fair value of his shares. If the proposed corporate action is effected, the corporation shall pay to the shareholder, upon surrender of the certificate or certificates representing his shares, the fair value thereof as of the day prior to the date on which the vote was taken approving the proposed corporate action, excluding any appreciation or depreciation in anticipation of such corporate action. A shareholder failing to make demand within the prescribed period is bound by the terms of the proposed corporate action. A shareholder making such demand is thereafter entitled only to payment as provided in this section and is not entitled to vote or to exercise any other rights of a shareholder.

(2) No such demand may be withdrawn unless the corporation consents thereto. The right of a shareholder to be paid the fair value of his shares shall cease and his status as a shareholder shall be restored, without prejudice to any corporate proceedings which may have been taken during the interim, if:

- (a) the shareholder's demand is withdrawn upon consent;
- (b) the proposed corporate action is abandoned or rescinded or the shareholders revoke the authority to effect such action;
- (c) in the case of a merger, on the date of the filing of the articles of merger the surviving corporation is the owner of all the outstanding shares of the other corporations, domestic and foreign, that are parties to the merger;
- (d) no demand or petition for the determination of fair value by a court is made or filed within the time provided in this section; or
- (e) a court of competent jurisdiction determines that the shareholder is not entitled to the relief provided by this section.

(3) Within 10 days after the corporate action is effected, the corporation or, in the case of a merger or consolidation, the surviving or new corporation, domestic or foreign, shall give written notice thereof to each dissenting shareholder who has made demand as herein provided and shall make a written offer to each such shareholder to pay for his shares at a specified price considered by the corporation to be the fair value thereof. The notice and offer shall be accompanied by a balance sheet of the corporation, the shares of which the dissenting shareholder holds, as of the latest available date and not more than 12 months prior to the making of such



offer, and a profit and loss statement of that corporation for the 12-month period ending on the date of such balance sheet.

(4) If within 30 days after the date on which the corporate action was effected, the fair value of such shares is agreed upon between the dissenting shareholder and the corporation, payment therefor shall be made within 90 days after the date on which the corporate action was effected, upon surrender of the certificate or certificates representing the shares. Upon payment of the agreed value, the dissenting shareholder ceases to have any interest in the shares.

(5) If within such 30-day period a dissenting shareholder and the corporation do not so agree, the dissenting shareholder may, within 60 days after the date on which the corporate action was effected, make written demand on the corporation for the filing of a petition, in the district court for the county in this state where the corporation's registered office is located, to have the fair value of his shares determined. The corporation must file the petition within 30 days after receipt of the written demand or at its election may file the petition at any time within 60 days after the date on which the corporate action was effected. If, in the case of a merger or consolidation, the surviving or new corporation is a foreign corporation without a registered office in this state, the petition shall be filed in the county where the registered office of the domestic corporation was last located. If the corporation fails to file the petition, any dissenting shareholder may do so in the name of the corporation. All dissenting shareholders, wherever residing, shall be made parties to the proceeding as an action on their shares quasi in rem. Each dissenting shareholder shall be served personally or by publication as provided by the Montana Rules of Civil Procedure. The jurisdiction of the court is plenary and exclusive. All shareholders who are parties to the proceeding are entitled to judgment against the corporation for the amount of the fair value of their shares.

(6) The court may, if it so elects, appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers have such power and authority as is specified in the order of their appointment or in an amendment thereof. The judgment is payable only upon and concurrently with the surrender to the corporation of the certificate or certificates representing the shares. Upon payment of the judgment, the dissenting shareholder ceases to have any interest in the shares.

(7) The judgment shall include an allowance for interest, at such rate as the court may find to be fair and equitable under all the circumstances, from the date on which the vote was taken on the proposed corporate action to the date of payment.

(8) The costs and expenses of any such proceeding shall be determined by the court and shall be assessed against the corporation, but all or any part of the costs and expenses may be apportioned and assessed as the court considers equitable against any or all of the dissenting shareholders who are parties to the proceeding and to whom the corporation made an offer to pay for the shares, if the court finds that the action of such shareholders in failing to accept such offer was arbitrary or vexatious or not in good faith. The expenses include reasonable compensation for and reason-

able expenses of the appraisers but do not include the fees and expenses of counsel for and experts employed by any party. However, if the fair value of the shares as determined materially exceeds the amount which the corporation offered to pay therefor or if no offer was made, the court in its discretion may award to any shareholder who is a party to the proceeding such sum as the court determines to be reasonable compensation to any expert or experts employed by the shareholder in the proceeding.

(9) Within 20 days after demanding payment for his shares, each shareholder demanding payment shall submit the certificate or certificates representing his shares to the corporation for notation thereon that such demand has been made. His failure to do so shall, at the option of the corporation, terminate his rights under this section unless a court of competent jurisdiction, for good and sufficient cause shown, otherwise directs. If shares represented by a certificate on which notation has been made are transferred, each new certificate issued therefor shall bear similar notation, together with the name of the original dissenting holder of the shares. A transferee of such shares acquires by the transfer no rights in the corporation other than those which the original dissenting shareholder had after making demand for payment of the fair value thereof.

(10) Shares acquired by a corporation pursuant to payment of the agreed value therefor or to payment of the judgment entered therefor, as in this section provided, may be held and disposed of by the corporation as in the case of other treasury shares, except that in the case of a merger or consolidation, they may be held and disposed of as the plan of merger or consolidation otherwise provides.

**History:** En. Sec. 74, Ch. 300, L. 1967; amd. Sec. 11, Ch. 62, L. 1977.

#### Amendments

The 1977 amendment inserted the subsection and subdivision designations; substituted "prescribed period" for "ten-day period" in the fourth sentence of subsection (1); inserted the second sentence of subsection (2); deleted "then the right of such shareholder to be paid the fair value of his shares shall cease and his status as a shareholder shall be restored, without prejudice to any corporate proceedings which may have been taken during the interim" from the end of subdivision (2)(e); substituted "dissenting sharehold-

er may \* \* \* 60 days after the date on which the corporate action was effected" in subsection (5) for "corporation, within thirty (30) days after receipt of written demand from any dissenting shareholder given within sixty (60) days after the date on which such corporate action was effected, shall, or at its election at any time within such period of sixty (60) days may, file a petition in the district court in the county in this state where the registered office of the corporation is located praying that the fair value of such shares be found and determined"; and made minor changes in phraseology and punctuation.

**15-2285. Articles of dissolution—tax clearance certificate.** If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities and obligations of the corporation have been paid and discharged, or adequate provision has been made therefor, and all of the remaining property and assets of the corporation have been distributed to its shareholders, articles of dissolution shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

(a) to (e). \* \* \* [Same as parent volume.]

No decree of voluntary dissolution shall be made and entered by any court, nor shall the clerk of the district court of any county or secretary of state file any such decree, or file any other document by which the term of existence of any corporation is terminated except a decree of involuntary dissolution in an action brought by the attorney general, nor shall the secretary of state file any certificate of surrender by a foreign corporation of its right to do intrastate business in the state unless the corporation obtains from the state department of revenue and files with said court, clerk of the district court, or secretary of state as part of the original instrument effecting the dissolution or withdrawal, a certificate to the effect the state department of revenue is satisfied from the available evidence that all taxes imposed by Title 84 of the Revised Codes of Montana have been paid. The issuance of the certificate shall not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana.

**History:** En. Sec. 85, Ch. 300, L. 1967; amd. Sec. 2, Ch. 152, L. 1969; amd. Sec. 3, Ch. 391, L. 1973.

#### **Amendments**

The 1969 amendment deleted the subdivision designation "(f)" from the last

paragraph and inserted "except a decree \* \* \* by the attorney general" after "is terminated" in the first sentence.

The 1973 amendment substituted "department of revenue" for "board of equalization" in two places in the final paragraph.

### **15-2287. Transferred.**

#### **Compiler's Notes**

Section 1, Ch. 455, Laws of 1977 redesignated this section as sec. 15-2701.

### **15-2288, 15-2289. Repealed.**

#### **Repeal**

Sections 15-2288, 15-2289 (Sees. 88, 89, Ch. 300, L. 1967), relating to notice to attorney general of failure to file annual

reports and venue and process in involuntary dissolution, were repealed by Sec. 9, Ch. 455, Laws 1977.

**15-2290. Jurisdiction of court to liquidate assets and business of corporation.** The district courts shall have full power to liquidate the assets and business of a corporation:

(a) to (c) \* \* \* [Same as parent volume.]

(d) When a corporation has been dissolved by the secretary of state and it is established that liquidation of its business and affairs is necessary.

(e) Upon filing a verified petition and/or application by a stockholder, director or creditor of any corporation which was dissolved under any corporation laws, which were in effect prior to the effective date of chapter 300, Laws of Montana 1967, if such dissolved corporation has, or may hereafter be found to have, any property, property rights or other assets, including money, which have not been distributed to creditors and/or shareholders legally entitled to the same.

Proceedings under this section shall be brought in the county in which the registered office or the principal office of the corporation is situated.

It shall not be necessary to make shareholders parties to any such action or proceeding unless relief is sought against them personally.



History: En. Sec. 90, Ch. 300, L. 1967; amd. Sec. 1, Ch. 174, L. 1969; amd. Sec. 7, Ch. 455, L. 1977.

#### Compiler's Notes

Section 3 of Chapter 174, Laws 1969 provided: "This act shall not apply to and shall not affect the rights and interests in any dissolved corporation as to which dissolution proceedings were, at the effective date of Chapter 198, Laws of Montana 1967 [December 31, 1968], being continued under the supervision of a court having jurisdiction, except as to any property, property rights or other assets, including money, which might be found after the conclusion of said pending proceedings."

The effective date of chapter 300, Laws of 1967, referred to in subdivision (e), was December 31, 1968.

#### Amendments

The 1969 amendment inserted subdivision (e) and the reference to it in the following paragraph.

The 1977 amendment substituted subdivision (d) for "When an action has been filed by the attorney general to dissolve a corporation and it is established that liquidation of its business and affairs should precede the entry of a decree of dissolution"; and deleted "clause (a), (b), (c), or (e) of" before "this section" in the next to last paragraph.

**15-2295. Decree of involuntary dissolution.** In proceedings to liquidate the assets and business of a corporation, when the costs and expenses of such proceedings and all debts, obligations and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed to its shareholders, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts and obligations, all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease, or, in the event the proceedings is [are] under subdivision (e) of section 15-2290, R. C. M. 1947, the court shall make an order and decree of final distribution and liquidation, discharging the receiver appointed and also discharging all surviving directors of such dissolved corporation from their duties and responsibilities as trustees for the creditors and/or for stockholders of such corporation.

History: En. Sec. 95, Ch. 300, L. 1967; amd. Sec. 2, Ch. 174, L. 1969.

#### Compiler's Notes

Section 3 of Chapter 174, Laws 1969 provided: "This act shall not apply to and shall not affect the rights and interests in any dissolved corporation as to which dissolution proceedings were, at the effective date of Chapter 198, Laws of Montana 1967 [December 31, 1968], being continued under the supervision of a court having jurisdiction, except as to any property, property rights or other assets, including money, which might be found after the

conclusion of said pending proceedings."

The compiler has inserted the bracketed word "are."

#### Amendments

The 1969 amendment added "or, in the event \* \* \* stockholders of such corporation."

#### Effective Date

Section 4 of Ch. 174, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 28, 1969.

**15-2299. Admission of foreign corporation.** (1) No foreign corporation may transact business in this state until it procures a certificate of authority to do so from the secretary of state. No foreign corporation shall be entitled to procure a certificate of authority under this act to transact in this state any business which a corporation organized under this act is not permitted to transact. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or country under which such corporation is organized governing its organiza-

tion and internal affairs differ from the laws of this state, and nothing in this act shall be construed to authorize this state to regulate the organization or the internal affairs of such corporation.

(2) Without excluding other activities which may not constitute transacting business in this state, a foreign corporation shall not be considered to be transacting business in this state, for the purposes of this act, by reason of carrying on in this state any one or more of the following activities:

(a) maintaining or defending any action or suit or any administrative or arbitration proceeding or effecting the settlement thereof or the settlement of claims or disputes;

(b) holding meetings of its directors or shareholders or carrying on other activities concerning its internal affairs;

(c) maintaining bank accounts;

(d) maintaining offices or agencies for the transfer, exchange, and registration of its securities or appointing and maintaining trustees or depositories with relation to its securities;

(e) effecting sales through independent contractors;

(f) soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without this state before becoming binding contracts;

(g) creating, as borrower or lender, or acquiring indebtedness or mortgages or other security interests in real or personal property if there is no activity conducted by the out-of-state borrower or lender with respect to the loan except periodic inspection of the security;

(h) securing or collecting debts or enforcing any rights in property securing the same;

(i) transacting any business in interstate commerce;

(j) conducting an isolated transaction completed within a period of 30 days and not in the course of a number of repeated transactions of like nature.

**History:** En. Sec. 99, Ch. 300, L. 1967; amd. Sec. 2, Ch. 66, L. 1977.

#### Amendments

The 1977 amendment inserted subsection designations (1) and (2); substituted subdivision (2)(g) for a subdivision reading "Creating evidences of debt, mortgages or liens on real or personal property"; and made minor changes in phraseology, punctuation and style.

#### Foreign Corporation No Longer Admitted

Insurance company no longer authorized to transact business in Montana was able to maintain suit in equity enjoining its conservation agent, whose duties were to service present policyholders, from using a list of policyholders to solicit business for another insurance company who subsequently employed him as sales manager. *Empire Life Ins. Co. of America v. Sorenson*, 347 F Supp 987.

### 15-22-100. Powers of foreign corporation.

#### Venue

This act does not grant a foreign corporation residency in a particular county

of this state for venue purposes. *Foley v. General Motors Corp.*, 159 M 469, 499 P 2d 774.

**15-22-104. Filing of application for certificate of authority.** Duplicate originals of the application of the corporation for a certificate of authority shall be delivered to the secretary of state, together with a copy of its articles of incorporation and all amendments thereto duly certified by

manual or facsimile signature by the proper officer of the state or country of incorporation.

If the secretary of state finds that such application conforms to law, he shall, when all fees have been paid as in this act prescribed:

(1) to (3). \* \* \* [Same as parent volume.]

The certificate of authority, together with the duplicate original of the application affixed thereto by the secretary of state shall be returned to the corporation or its representative.

History: En. Sec. 104, Ch. 300, L. 1967; amd. Sec. 3, Ch. 152, L. 1969.

#### Amendments

The 1969 amendment substituted "certified" for "authenticated" in the first sentence.

### 15-22-106. Registered office and registered agent of foreign corporation.

#### Venue

This section does not grant to a foreign corporation residency for venue purposes in any particular county of this state by

reason of the residency of its statutory agent for the service of process therein. *Foley v. General Motors Corp.*, 159 M 469, 499 P 2d 774.

**15-22-109. Amendment to articles of incorporation of foreign corporation.** Whenever the articles of incorporation of a foreign corporation authorized to transact business in this state are amended, such foreign corporation shall, within sixty (60) days after such amendment becomes effective, file in the office of the secretary of state a copy of such amendment duly certified by the proper officer of the state or country under the laws of which it is incorporated; but the filing thereof shall not of itself enlarge or alter the purpose or purposes which such corporation is authorized to pursue in the transaction of business in this state.

History: En. Sec. 109, Ch. 300, L. 1967; amd. Sec. 4, Ch. 152, L. 1969.

#### Amendments

The 1969 amendment substituted "certified" for "authenticated."

**15-22-110. Merger of foreign corporation authorized to transact business in this state.** Whenever a foreign corporation authorized to transact business in this state shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is incorporated, and such corporation shall be the surviving corporation, it shall, within sixty (60) days after such merger becomes effective, file with the secretary of state a copy of the articles of merger duly certified by the proper officer of the state or country under the laws of which such statutory merger was effected; and it shall not be necessary for such corporation to procure either a new or amended certificate of authority to transact business in this state unless the name of such corporation be changed thereby or unless the corporation desires to pursue in this state other or additional purposes than those which it is then authorized to transact in this state.

History: En. Sec. 110, Ch. 300, L. 1967; amd. Sec. 5, Ch. 152, L. 1969.

#### Amendments

The 1969 amendment substituted "certified" for "authenticated."

**15-22-112. Withdrawal of foreign corporation.** A foreign corporation authorized to transact business in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal.



In order to procure such certificate of withdrawal, such foreign corporation shall deliver to the secretary of state an application for withdrawal, which shall set forth:

(a) to (e). \* \* \* [Same as parent volume.]

(f) That all taxes imposed on the corporation by Title 84 of the Revised Codes of Montana have been paid, supported by a certificate by the state department of revenue, to be attached to said application, to the effect that the state department of revenue is satisfied from the available evidence that all taxes imposed by Title 84 of the Revised Codes of Montana have been paid. The issuance of such a certificate shall not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana.

The application for withdrawal shall be made in a form prescribed by the secretary of state and shall be executed for the corporation by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing the application, or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by such receiver or trustee and verified by him.

**History:** En. Sec. 112, Ch. 300, L. 1967; amd. Sec. 4, Ch. 391, L. 1973.

partment of revenue" for "board of equalization" in two places in subdivision (f).

#### Amendments

The 1973 amendment substituted "de-

### 15-22-117. Transacting business without certificate of authority.

**Foreign Corporation No Longer Admitted**

Insurance company no longer authorized to transact business in Montana was able to maintain suit in equity enjoining its conservation agent, whose duties were to

service present policyholders, from using list of policyholders to solicit business for another insurance company who subsequently employed him as sales manager. *Empire Life Ins. Co. of America v. Sorenson*, 347 F Supp 987.

### DECISIONS UNDER FORMER LAW

#### License Tax Delinquency

Neither foreign corporation which created and assigned accounts receivable before complying with laws of state nor foreign corporation to which accounts receivable were assigned had right of enforcement until assignor paid license taxes under former statute providing that no contract of a foreign corporation is enforceable during the period of delinquency

in payment of its fees and licenses, and although a subsequent compliance with statute would remove bar of nonenforceability, removal would not relate back to date of original delinquency and would not bar superior rights of others that accrued during period of delinquency. *Manufacturers Acceptance Corp. v. Krsul*, 151 M 28, 438 P 2d 667.

**15-22-119. Filing of annual report of domestic and foreign corporations.** Such annual report of a domestic or foreign corporation shall be delivered to the secretary of state between the first day of January and the fifteenth day of April of each year, except that the first annual report of a domestic or foreign corporation shall be filed between the first day of January and the fifteenth day of April of the year next succeeding the calendar year in which its certificate of incorporation or its certificate of authority, as the case may be, was issued by the secretary of state. Proof to the satisfaction of the secretary of state that prior to the fifteenth day

of April such report was deposited in the United States mail in a sealed envelope, properly addressed, with postage prepaid, shall be deemed a compliance with this requirement. If the secretary of state finds that such report conforms to the requirements of this act, he shall file the same. If he finds that it does not so conform, he shall promptly return the same to the corporation for any necessary corrections, in which event the penalties hereinafter prescribed for failure to file such report within the time hereinabove provided shall not apply, if such report is corrected to conform to the requirements of this act and returned to the secretary of state within thirty days from the date on which it was mailed to the corporation by the secretary of state.

**History:** En. Sec. 119, Ch. 300, L. 1967;  
amd. Sec. 1, Ch. 6, L. 1971.

**Amendments**

The 1971 amendment substituted "fifteenth day of April" for "first day of March" wherever it appears in the section.

**15-22-121. Fees for filing documents and issuing certificates.** The secretary of state shall charge and collect for:

(a) and (b). \* \* \* [Same as parent volume.]

(c) Filing restated articles of incorporation and issuing a restated certificate of incorporation, twenty dollars (\$20).

(d) to (l). \* \* \* [Same as parent volume.]

(m) Filing articles of dissolution and issuing a certificate of dissolution, five dollars (\$5).

(n) to (t). \* \* \* [Same as parent volume.]

**History:** En. Sec. 121, Ch. 300, L. 1967;  
amd. Sec. 6, Ch. 152, L. 1969.

issuing a restated certificate of incorporation" in subdivision (c) and "and issuing a certificate of dissolution" in subdivision (m).

**Amendments**

The 1969 amendment inserted "and is-

**15-22-122. Miscellaneous charges.** The secretary of state shall charge and collect:

(a) For furnishing a certified copy of any document, instrument, or paper relating to a corporation, fifty cents (\$.50) per page and two dollars (\$2) for the certificate and affixing the seal thereto.

(b) \* \* \* [Same as parent volume.]

**History:** En. Sec. 122, Ch. 300, L. 1967;  
amd. Sec. 1, Ch. 185, L. 1971.

**Amendments**

The 1971 amendment increased the per page charge specified in subdivision (a) from 35¢ to 50¢.

**15-22-126. Penalties imposed upon officers and directors.**

**DECISIONS UNDER FORMER LAW**

**Liability of Officers and Directors**

Under former statute providing for liability of directors for failure to file required annual report, directors were liable to creditors only for debts contracted during period corporation was in default in filing annual report but if report when filed was false, officers and not directors were liable to creditors for damages re-

sulting therefrom; false report was not same as no report, nor should court refrain from enforcing annual report requirements because statute did not require sufficient facts to apprise public of corporation's financial condition. *Mountain States Supply v. Mountain States Feed & Livestock Co.*, 149 M 198, 425 P 2d 75.

**15-22-128. Secretary of state to notify corporation of expiration of existence.** It shall be the duty of the secretary of state to notify every corporation organized after July 1, 1929, not less than three (3) months, nor more than six (6) months before the date of the expiration of its corporate existence, that its corporate existence is about to expire, which notice shall be given by registered letter addressed to such corporation at its principal place of business, as it appears from the last annual report.

**Compiler's Notes**

This section is reprinted to correct an error in the parent volume.

**15-22-141 to 15-22-144. [Transferred from Title 94.]**

**Compiler's Notes**

These sections were originally numbered 94-2322 to 94-2325. Section 29, Ch. 513, Laws of 1973, renumbered them to appear in this title. Because there has been no change in text, the sections are

not reprinted here but may be found in bound Volume Eight as follows:

New Sec.	Vol. 8
15-22-141	94-2322
15-22-142	94-2323
15-22-143	94-2324
15-22-144	94-2325.

**CHAPTER 23—MONTANA NONPROFIT CORPORATION ACT**

**Section**

- 15-2304. Purposes.** 15-2304.1. Newborn infants to be covered by insurance issued by health service corporation.  
**15-2354.** Jurisdiction of court to liquidate assets and affairs of corporation.  
**15-2359.** Decree of involuntary dissolution.  
**15-2383.** Fees for filing documents and issuing certificates.  
**15-2384.** Miscellaneous charges.  
**15-2398.** Nonprofit corporations—federal tax laws.

**15-2304. Purposes.** Corporations may be organized under this act for any lawful purpose or purposes.

**History:** En. Sec. 4, Ch. 198, L. 1967; amd. Sec. 106, Ch. 349, L. 1974; amd. Sec. 24, Ch. 319, L. 1975.

**Compiler's Notes**

Section 106, Ch. 349, Laws 1974, substituted "department of health and environmental sciences" in this section for "state board of health."

**Amendments**

The 1975 amendment deleted all but the first sentence of this section. For prior version, see parent volume and Compiler's Note above.

**15-2304.1. Newborn infants to be covered by insurance issued by health service corporation.** No disability insurance plan or group disability insurance plan issued by a health service corporation, which in addition to covering the persons insured, also covers members of such a person's family, may be issued or amended in this state if it contains any disclaimer, waiver or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of the persons insured from and after the moment of birth. Each such policy shall contain a provision granting immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of any insured person.

**History:** En. Sec. 5, Ch. 74, L. 1973.



**15-2351 to 15-2353. Repealed.****Repeal**

Sections 15-2351 to 15-2353 (Secs. 51 to 53, Ch. 198, L. 1967; Sec. 12, Ch. 62, L.

1977), relating to involuntary dissolution of nonprofit corporations, were repealed by Sec. 9, Ch. 455, Laws 1977.

**15-2354. Jurisdiction of court to liquidate assets and affairs of corporation.** Courts of equity shall have full power to liquidate the assets and affairs of a corporation:

(a) to (c) \* \* \* [Same as parent volume.]

(d) When a corporation has been dissolved by the secretary of state and it is established that liquidation of its affairs is necessary.

(e) Upon filing a verified petition and/or application by a member, director or creditor of any corporation which was dissolved under any corporation laws, which were in effect prior to the effective date of chapter 198, Laws of Montana 1967, if such dissolved corporation has, or may hereafter be found to have, any property, property rights or other assets, including money, which have not been distributed to creditors and/or members legally entitled to the same.

Proceedings under this section shall be brought in the district court in which the registered office or the principal office of the corporation is situated.

It shall not be necessary to make directors or members parties to any such action or proceedings unless relief is sought against them personally.

**History:** En. Sec. 54, Ch. 198, L. 1967; amd. Sec. 1, Ch. 62, L. 1969; amd. Sec. 3, Ch. 455, L. 1977.

attorney general to dissolve a corporation and it is established that liquidation of its affairs should precede the entry of a decree of dissolution."

**Amendments**

The 1969 amendment inserted subdivision (e).

The 1977 amendment substituted subdivision (d) for a subdivision reading "When an action has been filed by the

**Repealing Clause**

Section 9 of Ch. 455, Laws 1977 read "Sections 15-2288, 15-2289, 15-2351, 15-2352, and 15-2353, R. C. M. 1947, are repealed."

**15-2359. Decree of involuntary dissolution.** In proceedings to liquidate the assets and affairs of a corporation, when the costs and expenses of such proceedings and all debts, obligations, and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed in accordance with the provisions of this act, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and obligations, and all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease, or, in the event the proceedings is [are] under subdivision (e) of section 15-2354, R. C. M. 1947, the court shall make an order and decree of final distribution and liquidation, discharging the receiver appointed and also discharging all surviving directors of such dissolved corporation from their duties and responsibilities as trustees for the creditors and/or members of such corporation.

**History:** En. Sec. 59, Ch. 198, L. 1967; amd. Sec. 2, Ch. 62, L. 1969.

**Compiler's Notes**

The compiler has inserted the bracketed word "are."

**Amendments**

The 1969 amendment added “, or, in the event \* \* \* of such corporation.”

**Effective Date**

Section 3 of Ch. 62, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 21, 1969.

**15-2383. Fees for filing documents and issuing certificates.** The secretary of state shall charge and collect for:

(a) to (g). \* \* \* [Same as parent volume.]

(h) Filing articles of dissolution and issuing a certificate of dissolution, five dollars (\$5).

(i) to (o). \* \* \* [Same as parent volume.]

**History:** En. Sec. 83, Ch. 198, L. 1967; amd. Sec. 7, Ch. 152, L. 1969.

visions (p) and (q), for text of which see parent volume.

**Amendments**

The 1969 amendment inserted “and issuing a certificate of dissolution,” in subdivision (h), and deleted former subdivision

**Effective Date**

Section 8 of Ch. 152, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 27, 1969.

**15-2384. Miscellaneous charges.** The secretary of state shall charge and collect:

(a) For furnishing a certified copy of any document, instrument, or paper relating to a corporation, fifty cents (\$.50) per page and two dollars (\$2) for the certificate and affixing the seal thereto.

(b) \* \* \* [Same as parent volume.]

**History:** En. Sec. 84, Ch. 198, L. 1967; amd. Sec. 2, Ch. 185, L. 1971.

**Amendments**

The 1971 amendment increased the per page charge specified in subdivision (a) from 35¢ to 50¢.

**15-2398. Nonprofit corporations—federal tax laws.** In the absence of an express provision to the contrary in its articles of incorporation, a corporation organized at any time under Title 15, chapter 23, R. C. M. 1947, the Montana Nonprofit Corporation Act, which is a private foundation, as defined in Section 509 of the Internal Revenue Code of 1954, as in effect on the effective date of this act during the period it is a private foundation:

(a) shall not engage in any act of self-dealing as defined in section 4941(d) thereof;

(b) shall distribute its income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by section 4942 thereof;

(c) shall not retain any excess business holdings as defined in section 4943(c) thereof;

(d) shall not make any investment in such manner as to subject it to tax under section 4944 thereof;

(e) shall not make any taxable expenditure as defined in section 4945(d) thereof.

**History:** En. 15-2398 by Sec. 2, Ch. 332, L. 1974.

**Separability Clause**

Section 3 of Ch. 332, Laws 1974 read “If any provision of this act or the ap-

plication thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable."

#### Effective Date

Section 4 of Ch. 332, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 28, 1974.

### CHAPTER 24—MONTANA RELIGIOUS CORPORATION SOLE ACT

#### Section

15-2408. Board of advisors or consultants—interim powers.

**15-2408. Board of advisors or consultants—interim powers.** The bishop, chief priest, or presiding elder of the corporation sole created hereby, may appoint a board of advisors or consultants consisting of at least four persons of legal age and otherwise qualified according to the rules, regulations or discipline of the denomination, society or church, which board, in addition to its advisory function, shall exercise the powers of the corporation upon the death, resignation, transfer, removal or deprivation of office of the bishop, chief priest or presiding elder; and which shall elect an administrator to which it may delegate the executive and administrative functions of the corporation during the interim and until the successor bishop, chief priest or presiding elder is appointed, elected or qualified, according to the rules, regulations or discipline of the denomination, society or church.

**History:** En. Sec. 8, Ch. 301, L. 1967; amd. Sec. 1, Ch. 113, L. 1977.

#### Effective Date

Section 2 of Ch. 113, Laws 1977 provided the act should be in effect from and after its passage and approval. Approved March 25, 1977.

#### Amendments

The 1977 amendment deleted "but not more than six (6)" after "board of advisors or consultants consisting of at least four" near the beginning of the section; and made a minor change in style.

### CHAPTER 25—BUSINESS TRUSTS

#### Section

15-2504. Required filings with the secretary of state—certified copy of trust instrument—filing.

**15-2504. Required filings with the secretary of state—certified copy of trust instrument—filing.** (1) Any business trust desiring to transact business in this state shall file with the secretary of state:

(a) an executed copy of its articles, declarations of trust, or trust agreement by which the trust was created and all amendments thereto or a true copy thereof certified to be such by a trustee of the trust before an official authorized to administer oaths or by a public official of another state, territory, or country in whose office an executed copy thereof is on file. The true copy shall be verified within 60 days before it is filed with the secretary of state.

(b) a verified list of the names, residences, and post-office addresses of its trustees;

(c) an affidavit setting forth its assumed business name, if any.



(2) A foreign business trust shall file a verified application in the office of the secretary of state as provided in the case of foreign corporations under 15-22-103 and shall file a copy of its articles, declaration of trust, or trust agreement by which it was created, certified by the secretary of state, in the office of the county clerk of the county where its principal office or place of business in this state will be located. The foreign business trust shall also file, at the same time and in the same office, a certificate certifying that it has consented to all the license laws and other laws of the state of Montana relative to foreign corporations and has consented to be sued in the courts of this state, upon all causes of action arising against it in this state and that service of process may be made upon some person, a citizen of this state whose principal place of business is designated in such certificate. Service of process, when made upon such agent, is valid service on the business trust.

(3) Whenever a business trust has complied with the filing requirements as provided in subsections (1) and (2) of this section, the secretary of state shall issue to a domestic business trust a certificate of organization or to a foreign business trust a license to do business in this state, and the business trust may thereupon commence business.

**History:** En. Sec. 4, Ch. 277, L. 1967;  
amd. Sec. 13, Ch. 62, L. 1977.

#### Amendments

The 1977 amendment redesignated subdivisions (a)(1) through (a)(3) as subdivisions (1)(a) through (1)(c); redesignated former subdivision (a)(4) as subsection (2); substituted "verified application" for "verified statement" near the beginning of subsection (2); substituted "15-22-103" for "section 15-1701

(1) of the Revised Codes of Montana, 1947" in the middle of the first sentence of subsection (2); deleted "as provided for foreign corporations in section 15-1701 (2)" before "a copy of its articles" near the end of the first sentence of subsection (2); redesignated former subsection (b) as subsection (3); substituted "subsections (1) and (2)" for "subsection (a)" in subsection (3); and made minor changes in phraseology, punctuation and style.

### CHAPTER 26—MONTANA DEVELOPMENT CREDIT CORPORATION ACT

Section	
15-2601.	Purpose.
15-2602.	Definitions.
15-2603.	Incorporators—general powers—capital stock—articles of incorporation.
15-2604.	Certificate of incorporation.
15-2605.	Amendment of articles of incorporation.
15-2606.	Board of directors.
15-2607.	Powers of stockholders and members.
15-2608.	First meeting of corporation.
15-2609.	Stock ownership and limitations.
15-2610.	Members, and limitation and apportionment of loans by members.
15-2611.	Withdrawal of membership.
15-2612.	Surplus.
15-2613.	Deposit of funds.
15-2614.	Control—supervision—reports.
15-2615.	Duration.
15-2616.	Termination.
15-2617.	Credit of state not pledged.
15-2618.	Application to sections of Revised Codes of Montana 1947.

**15-2601. Purpose.** The purposes of the corporation shall be to promote, stimulate, develop, and advance the business prosperity and economic welfare of the state of Montana and its citizens; to encourage and assist

through loans, investments, or other business transactions, in the location of new business and industry in this state and to rehabilitate and assist existing business and industry; and so to stimulate and assist in the expansion of all kinds of business activity which will tend to promote the business development and maintain the economic stability of this state, provide maximum opportunities for employment, encourage thrift, and improve the standards of living of the citizens of this state; similarly, to co-operate and act in conjunction with other organizations, public or private, in the promotion and advancement of industrial, commercial, agricultural, and recreational developments in this state; and to provide financing for the promotion, development, and conduct of all kinds of business activity in this state.

In furtherance of such purposes and in addition to the powers conferred on business corporations by the provisions of Title 15 of the Revised Codes of Montana 1947, the corporation shall, subject to the restrictions and limitations herein contained, have the additional powers and functions enumerated herein.

**History:** En. Sec. 1, Ch. 123, L. 1969.

**Title of Act**

An act to authorize the incorporation of

development credit corporations for the purpose of promoting, developing, and advancing the prosperity and economic welfare of the state.

**15-2602. Definitions.** As used in this act, the following words and phrases, unless differently defined or described, shall have the meanings and references as follows:

(1) "Corporation": A Montana development credit corporation created under this act.

(2) "Financial institution": Any banking corporation or trust company, building and loan association, insurance company or related corporation, partnership, foundation, or other institution engaged primarily in lending or investing funds.

(3) "Member": Any financial institution authorized to do business within this state which shall undertake to lend money to a corporation created under this act, upon its call, and in accordance with the provisions of this act.

(4) "Board of directors": The board of directors of the corporation created under this act.

(5) "Loan limit": For any member, the maximum amount permitted to be outstanding at one time on loans made by such member to the corporation, as determined under the provisions of this act.

**History:** En. Sec. 2, Ch. 123, L. 1969.

**15-2603. Incorporators—general powers—capital stock—articles of incorporation.** Nine or more persons, a majority of whom shall be residents of this state, who desire to create a development credit corporation under the provisions of this act for the purpose of promoting, developing, and advancing the prosperity and economic welfare of the state and, to that end, to exercise the powers and privileges hereinafter provided, may be incorporated in the following manner:

(1) Such persons shall by articles of incorporation filed in the manner prescribed in Title 15, under their hands and seals, set forth:

(a) the name of the corporation, which shall include the words "Development Credit Corporation of Montana";

(b) the location of the principal office of the corporation, but such corporation may have offices in such other places within the state as may be fixed by the board of directors;

(c) the purposes for which the corporation is founded, which shall include the following:

(i) to elect, appoint, and employ officers, agents, and employees;

(ii) to make contracts and incur liabilities for any of the purposes of the corporation; provided that the corporation may not incur any secondary liability by way of guaranty or endorsement of obligations of any person, firm, corporation, joint-stock company, association, or trust or in any other manner;

(iii) to borrow money from the members, nonmember persons, firms, or corporations and state and federal agencies for any of the purposes of the corporation; to issue therefor its bonds, debentures, notes, or other evidences of indebtedness, whether secured or unsecured, and to secure the same by mortgage, pledge, deed of trust, or other lien on its property, franchises, rights, and privileges of every kind and nature or any part thereof or interest therein, without securing stockholder or member approval; provided that no loan to the corporation may be secured in any manner unless all outstanding loans to the corporation are secured equally and ratably in proportion to the unpaid balance of such loans and in the same manner;

(iv) to make loans to any person, firm, corporation, joint-stock company, association, or trust and establish and regulate the terms and conditions with respect to any such loans and the charges for interest and service connected therewith; provided, however, that the corporation may not approve any application for a loan unless the person applying for the loan shows that he has applied for the loan through ordinary banking channels and that the loan has been refused by at least one bank or other financial institution;

(v) to participate with any duly authorized private lending agency and city, state, and federal governmental lending agencies in the making of loans;

(vi) to purchase, receive, hold, lease, or otherwise acquire and to sell, convey, transfer, lease, or otherwise dispose of real and personal property, together with such rights and privileges as may be incidental and appurtenant thereto and the use thereof, including, but not restricted to, any real or personal property acquired by the corporation from time to time in the satisfaction of debts or enforcement of obligations;

(vii) to acquire the good will, business, rights, real and personal property, and other assets or any part thereof or interest therein of any persons, firms, corporations, joint-stock companies, associations, or trusts and to assume, undertake, or pay the obligations, debts, and liabilities of any such person, firm, corporation, joint-stock company, association, or trust;



(viii) to acquire improved or unimproved real estate for the purpose of constructing industrial plants or other business establishments thereon or for the purpose of disposing of such real estate to others for the construction of industrial plants or other business establishments;

(ix) to acquire, construct or reconstruct, alter, repair, maintain, operate, sell, convey, transfer, lease, or otherwise dispose of industrial plants or business establishments;

(x) to acquire, subscribe for, own, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of the stock, shares, bonds, debentures, notes, or other securities and evidences of interest in or indebtedness of any person, firm, corporation, joint-stock company, association, or trust and while the owner or holder thereof exercise all the rights, powers, and privileges of ownership, including the right to vote thereon;

(xi) to mortgage, pledge, or otherwise encumber any property, right, or thing of value, acquired pursuant to the powers contained in subsections (1)(c)(vi) through (1)(c)(x) of this section, as security for the payment of any part of the purchase price thereof;

(xii) to cooperate with and avail itself of the facilities of the state planning and economic development divisions of the department of community affairs and any similar governmental agencies and to cooperate with, assist, and otherwise encourage organizations in the various communities of the state in the promotion, assistance, and development of the business prosperity and economic welfare of such communities or of this state or of any part thereof;

(xiii) to accept gifts, donations, bequests, devises, or grants from any person, corporation, association, or governmental agency, whether state, federal, or municipal;

(xiv) to do all acts and things necessary or convenient to carry out the powers expressly granted in this act;

(d) the amount of total authorized capital stock and the number of shares in which it is divided, the par value of each share, the amount of capital stock with which it will commence business, and, if there is more than one class of stock, a description of the different classes, and the names and post-office addresses of the subscribers of stock and the number of shares subscribed by each. The aggregate of the subscription shall be the amount of capital with which the corporation will commence business.

(2) The articles of incorporation may also contain any provision consistent with the laws of this state for the regulation of the affairs of the corporation or creating, defining, limiting, and regulating its powers. The articles of incorporation shall be in accordance with the provisions of Title 15, so far as consistent with this act.

**History:** En. Sec. 3, Ch. 128, L. 1969; amd. Sec. 34, Ch. 71, L. 1977.

#### **Amendments**

The 1977 amendment inserted subsection designation "(1)"; redesignated former subsections (1) through (4) as subdivisions (1)(a) through (1)(d); re-

designated former subdivision (3)(a) as subdivision (1)(c)(i); inserted subdivision designation (1)(c)(ii); substituted "may" for "shall" before "not incur any secondary liability" in subdivision (1)(c)(ii); redesignated former subdivisions (3)(b) through (3)(f) as subdivisions (1)(c)(iii) through (1)(c)(vii); substituted "may"

for "shall" before "be secured in any manner unless all outstanding loans" near the end of subdivision (1)(c)(iii); substituted "may" for "shall" before "not approve any application for a loan" in the middle of subdivision (1)(c)(iv); added subdivision designations (1)(c)(viii) and (1)(c)(ix); redesignated former subdivi-

sions (3)(g) through (3)(k) as subdivisions (1)(c)(x) through (1)(c)(xiv); deleted "The articles of incorporation shall set forth" from the beginning of subdivision (1)(d); redesignated former subsection (5) as subsection (2); and made minor changes in phraseology and punctuation.

**15-2604. Certificate of incorporation.** Before the articles of incorporation shall become effective, the secretary of state must issue a certificate that a copy of the articles containing the required statement of facts has been filed in his office. Thereupon, the persons signing the articles and their associates and their successors and assigns, shall become a body politic and corporate, by the name specified in the articles of incorporation, subject to amendment and dissolution as provided in this act. The incorporators shall have the authority and shall perform such acts and things as required by the provisions of this act, as set forth in section 3 [15-2603] thereof.

History: En. Sec. 4, Ch. 128, L. 1969.

**15-2605. Amendment of articles of incorporation.** The articles of incorporation may be amended by the votes of the stockholders and the members of the corporation, voting separately by classes, and such amendments shall require approval by the affirmative vote of two-thirds (2/3) of the votes to which the stockholders shall be entitled and two-thirds (2/3) of the votes to which the members shall be entitled; provided that no amendment which is inconsistent with the general purposes expressed herein, or which eliminates or curtails the obligation of the corporation to make reports as provided in section 14 [15-2614], shall be made without amendment of this act; and provided, further, that no amendment of the articles of incorporation which increases the obligation of a member to make loans to the corporation, or makes any change in the principal amount, interest rate, maturity date, or in the security or credit position, of any outstanding loan of a member to the corporation, or affects a member's right to withdraw from membership as provided in section 11 [15-2611], or affects a member's voting rights as provided in section 7 [15-2607], shall be made without the consent of each member affected by such amendment. Within thirty (30) days after any meeting at which amendment of the articles of incorporation has been adopted, articles of amendment signed and sworn to by the president, treasurer, and a majority of the directors, setting forth such amendment and the due adoption thereof, shall so far as consistent with this act be submitted, as prescribed in Title 15, Revised Codes of Montana 1947, to the secretary of state, who shall examine them and if he finds that they conform to the requirements of this act, shall so certify and endorse his approval thereon. Thereupon, the amended articles of incorporation shall be filed in the office of the secretary of state and no such amendment shall take effect until such amended articles of incorporation shall have been filed as aforesaid.

History: En. Sec. 5, Ch. 128, L. 1969.



**15-2606. Board of directors.** The business and affairs of the corporation shall be managed and conducted by a board of directors, a president and treasurer, and such other officers and such agents as the corporation by its bylaws shall authorize. The board of directors shall consist of such number, not less than nine (9), as shall be determined in the first instance by the incorporators and thereafter annually by the members and the stockholders of the corporation. The directors need not be stockholders or members in the corporation. The board of directors may exercise all the powers of the corporation except such as are conferred by law or by the bylaws of the corporation upon the stockholders or members and shall choose and appoint all the agents and officers of the corporation and fill all vacancies in the office of director. The board of directors shall be elected in the first instance by the incorporators and thereafter at each annual meeting of the corporation, or, if no annual meeting shall be held in any year at the time fixed by the bylaws, at a special meeting held in lieu of the annual meeting. At each annual meeting, or at each special meeting held in lieu of the annual meeting, the stockholders shall elect the directors. The directors shall hold office until the next annual meeting of the corporation or special meeting held in lieu of the annual meeting after their election and until their successors are elected and qualified unless sooner removed in accordance with the provisions of the bylaws.

Directors and officers shall not be responsible for losses unless the same shall have been occasioned by the willful misconduct of such directors and officers.

History: En. Sec. 6, Ch. 128, L. 1969.

**15-2607. Powers of stockholders and members.** The stockholders and the members of the corporation shall have the following powers of the corporation: (a) to determine the number of and elect directors as provided in section 6 [15-2606] hereof; (b) to make, amend, and repeal bylaws; (c) to amend the articles of incorporation as provided in section 5 [15-2605]; (d) to exercise such other of the powers of the corporation as may be conferred on the stockholders and the members by the bylaws.

As to all matters requiring action by the stockholders and the members of the corporation, said stockholders and said members shall vote separately thereon by classes, and except as otherwise herein provided, such matters shall require the affirmative vote of a majority of the votes to which the stockholders present or represented at the meeting shall be entitled and the affirmative vote of a majority of the votes to which the members present or represented at the meeting shall be entitled.

Each stockholder shall have one (1) vote, in person or by proxy for each share of capital stock held by him, and each member shall have one (1) vote, in person or by proxy, except that any member having a loan limit of more than one thousand dollars (\$1,000.00) shall have one additional vote, in person or by proxy, regardless of the number of shares owned, for each additional one thousand dollars (\$1,000.00) which such member is authorized to have outstanding on loans to the corporation at any one time as determined under paragraph three (3) (b) of section 10 [15-2610].



History: En. Sec. 7, Ch. 128, L. 1969.

**15-2608. First meeting of corporation.** The first meeting of the corporation shall be called by a notice signed by three (3) or more of the incorporators, stating the time, place, and purpose of the meeting, a copy of which notice shall be mailed, or delivered, to each incorporator at least five (5) days before the day appointed for the meeting. Said first meeting may be held without such notice upon agreement in writing to that effect signed by all the incorporators. There shall be recorded in the minutes of the meeting a copy of said notice or of such unanimous agreement of the incorporators.

At such first meeting the incorporators shall organize by the choice, by ballot, of a temporary clerk, by the adoption of bylaws, by the election by ballot of directors, and by action upon such other matters within the powers of the corporation as the incorporators may see fit. The temporary clerk shall be sworn and shall make and attest a record of the proceedings. Five (5) of the incorporators shall be a quorum for the transaction of business.

History: En. Sec. 8, Ch. 128, L. 1969.

**15-2609. Stock ownership and limitations.** Notwithstanding any rule at common law or any provision of any general or special law or any provision in their respective charters, agreements of association, articles of organization, or trust indentures:

(1) All domestic corporations organized for the purpose of carrying on business within this state including without implied limitation any public utility companies and insurance and casualty companies and foreign corporations licensed to do business in the state, and all trusts, are hereby authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of any bonds, securities or other evidences of indebtedness created by, or the shares of the capital stock of, the corporation, and while owners of said stock to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of the state;

(2) All financial institutions are hereby authorized to become members of the corporation by making loans to the corporation as provided herein;

(3) A financial institution which does not become a member of the corporation shall not be permitted to acquire any share of the capital stock of the corporation;

(4) Each financial institution which becomes a member of the corporation is hereby authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of, any bonds, securities or other evidences of indebtedness created by, or the shares of the capital stock of the corporation, and while owners of said stock to exercise all the rights, powers and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of the state; provided, that the amount of the capital stock of the corporation which may be acquired by any member pursuant to the authority granted herein shall not exceed ten per cent (10%) of the loan limit of such member. The

amount of capital stock of the corporation which any member is authorized to acquire pursuant to the authority granted herein is in addition to the amount of capital stock in corporations which such member may otherwise be authorized to acquire.

History: En. Sec. 9, Ch. 128, L. 1969.

**15-2610. Members, and limitation and apportionment of loans by members.** Any financial institution may request membership in the corporation by making application to the board of directors on such form and in such manner as said board of directors may require, and membership shall become effective upon acceptance of such application by the board. The application for membership will specify the loan limit which shall be subject to call of the corporation, but in no case shall the amount so specified exceed the limit provided for in this act. Each member of the corporation shall make loans to the corporation as and when called upon by it to do so on such terms and other conditions as shall be approved from time to time by the board of directors, subject to the following conditions:

(1) All loan limits shall be established at the thousand-dollar amount nearest the amount computed in accordance with the provisions of this section.

(2) No loan to the corporation shall be made if immediately thereafter the total amount of the obligations of the corporation to its members would exceed ten (10) times the amount then paid in on the outstanding capital stock of the corporation.

(3) The total amount outstanding on loans to the corporation made by any member at any one time, when added to the amount of the investment in the capital stock of the corporation then held by such member, shall not exceed:

(a) Twenty per cent (20%) of the total amount then outstanding on loans to the corporation by all members, including in said total amount outstanding, amounts validly called for loan but not yet loaned.

(b) The following limit, to be determined as of the time such member becomes a member on the basis of the most recent year-end balance sheet of such member at the close of its fiscal year immediately preceding its application for membership: Three per cent (3%) of the capital and surplus of commercial banks and trust companies; one per cent (1%) of the total outstanding loans made by a building and loan association; two per cent (2%) of the capital and unassigned surplus of stock insurance companies; and such comparable limits as may be approved by the board of directors of the corporation for other financial institutions.

(4) Subject to paragraph three (3) (a) of this section, each call made by the corporation shall be prorated among the members of the corporation in substantially the same proportion that the adjusted loan limit of each member bears to the aggregate of the adjusted loan limits of all members. The adjusted loan limit of a member shall be the amount of such member's loan limit, reduced by the balance of outstanding loans made by such member to the corporation and the investment in capital stock of the corporation held by such member at the time of such call.

(5) All loans to the corporation by member shall be evidenced by bonds, debentures, notes or other evidences of indebtedness of the corporation, which shall be freely transferable at all times, and which shall bear interest at a rate of not less than one-half of one per cent (.50 of 1%) in excess of the rate of interest determined by the board of directors to be the prime rate prevailing at the date of issuance thereof on unsecured commercial loans.

History: En. Sec. 10, Ch. 128, L. 1969.

**15-2611. Withdrawal of membership.** Membership in the corporation shall be for the duration of the corporation; provided that—

(a) Upon written notice given to the corporation two (2) years in advance, a member may withdraw from membership in the corporation at the expiration date of such notice.

A member shall not be obligated to make any loans to the corporation pursuant to calls made subsequent to the withdrawal of said member.

History: En. Sec. 11, Ch. 128, L. 1969.

**15-2612. Surplus.** Each year the corporation shall set apart as earned surplus not less than ten per cent (10%) of its net earnings for the preceding fiscal year until such surplus shall be equal in value to one hundred per cent (100%) of the amount paid in on the capital stock then outstanding. Whenever the amount of surplus established herein shall become impaired, it shall be built up again to the required amount in the manner provided for its original accumulation. Net earnings and surplus shall be determined by the board of directors, after providing for such reserves as said directors deem desirable, and the directors' determination made in good faith shall be conclusive on all persons.

History: En. Sec. 12, Ch. 128, L. 1969.

**15-2613. Deposit of funds.** The corporation shall not deposit any of its funds in any banking institution unless such institution has been designated as a depository by a vote of a majority of the directors present at an authorized meeting of the board of directors, exclusive of any director who is an officer or director of the depository so designated.

The corporation shall not receive money on deposit.

History: En. Sec. 13, Ch. 128, L. 1969.

**15-2614. Control—supervision—reports.** The corporation is subject to the examination of the department of business regulation, and shall make reports of its condition not less than annually to that department, which in turn shall make copies of the reports available to the commissioner of insurance and to the governor. The corporation shall also file an annual statement required by Title 15, R. C. M. 1947.

History: En. Sec. 14, Ch. 128, L. 1969;  
amd. Sec. 87, Ch. 431, L. 1975.

#### Amendments

The 1975 amendment substituted "de-

partment of business regulation" and "department" in the first sentence for "state superintendent of banks" and "superintendent"; and made minor changes in style and phraseology.



**15-2615. Duration.** The period of duration of the corporation shall be perpetual.

**History:** En. Sec. 15, Ch. 128, L. 1969.

**15-2616. Termination.** If a corporation organized pursuant to this act shall fail to begin business within five (5) years from the effective date of its articles of incorporation, then said articles shall become null and void.

**History:** En. Sec. 16, Ch. 128, L. 1969.

**15-2617. Credit of state not pledged.** Under no circumstances is the credit of the state pledged herein.

**History:** En. Sec. 17, Ch. 128, L. 1969.

**15-2618. Application to sections of Revised Codes of Montana 1947.** The provisions of Title 15 of the Revised Codes of Montana 1947, shall apply to the corporation in so far as they may be applicable and not inconsistent with this act.

**History:** En. Sec. 18, Ch. 128, L. 1969.

#### **Separability Clause**

Section 19 of Ch. 128, Laws 1969 read  
"The provisions of this act are severable,

and if any of its provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions."

### **CHAPTER 27—INVOLUNTARY DISSOLUTION OF CORPORATIONS**

#### **Section**

- 15-2701. Involuntary dissolution.
- 15-2702. Defaulting corporations—penalties and forfeitures.
- 15-2703. Revocations of charters of defaulting corporations—duties of secretary of state—distribution of corporate assets.
- 15-2704. Reinstatement of defaulting corporations—duties of secretary of state—application and fees.
- 15-2705. Acquisition of new name by defaulting corporation upon reinstatement.
- 15-2706. Applicability to corporations presently in default.

**15-2701. Involuntary dissolution.** (1) Any domestic corporation, whether for profit or not for profit, may be dissolved involuntarily by order of the secretary of state when:

(a) the corporation has failed to file its annual report within the time required by law or failed to remit any fees required by law;

(b) the corporation procured its certificate of incorporation through fraud;

(c) the corporation has exceeded or abused the authority conferred upon it by law and such excesses or abuses have continued after a written notice specifying the manner in which the corporation has exceeded or abused such authority has been received by the registered agent of the corporation from the secretary of state;

(d) the corporation has failed for 60 days to appoint and maintain a registered agent in this state; or

(e) the corporation has failed for 60 days after change of its registered office or registered agent to file in the office of the secretary of state a statement of such change.

(2) If dissolution is sought under subsection (1)(b) or (1)(c) of this section, the secretary of state may so dissolve only when such fact is established by an order of the district court. In addition to other persons so authorized by law, the secretary of state or the attorney general may maintain an action in the district court to implement the provisions of this section.

**History:** En. Sec. 87, Ch. 300, L. 1967; Sec. 15-2287, R. C. M. 1947; amd. and redes. 15-2701 by Sec. 1, Ch. 455, L. 1977.

#### Amendments

The 1977 amendment renumbered the section; inserted the subsection (1) designation; substituted "Any domestic corporation, whether for profit or not for profit" at the beginning of subsection (1) for "A corporation"; substituted "order of the

secretary of state" in subsection (1) for "a decree of the district court in an action filed by the attorney general"; added "or failed to remit any fees required by law" to subdivision (1)(a); substituted "secretary of state" at the end of subdivision (1)(c) for "attorney general"; substituted "60 days" in subdivisions (1)(d) and (1)(e) for "30 days"; added subsection (2); and made minor changes in style and phraseology.

**15-2702. Defaulting corporations—penalties and forfeitures.** A corporation which is guilty of any of the actions or omissions described in 15-2701 (1) is in default. The defaulting corporation may, by reason of such default, be dissolved involuntarily by an order of the secretary of state in accordance with the provisions of this chapter and thereby forfeit its right to transact any business within the state.

**History:** En. 15-2702 by Sec. 2, Ch. 455, L. 1977.

#### Title of Act

An act to authorize the secretary of state to order the involuntary dissolution

of corporations without court decree; amending sections 15-2287, 15-2290, and 15-2354, R. C. M. 1947; and repealing sections 15-2288, 15-2289, 15-2351, 15-2352, and 15-2353, R. C. M. 1947.

**15-2703. Revocations of charters of defaulting corporations—duties of secretary of state—distribution of corporate assets.** (1) On or before October 1 of each year, the secretary of state shall compile a complete list of all defaulting corporations, together with the amount of any filing fee, penalty, or costs remaining unpaid.

(2) The secretary of state shall give notice to the defaulting corporations by causing such list to be posted in the state capitol for a period of at least 90 days and:

(a) by mailing a letter addressed to the corporation in care of its registered agent or any director or officer; or

(b) by publication of a general notice to all Montana corporations once a month for 3 consecutive months in a newspaper of general circulation in Lewis and Clark County.

(3) The notice referred to in subsection (2) shall specify the fact of the proposed dissolution and state that unless the grounds for dissolution described in 15-2701 no longer exist on the following first Monday in March:

(a) the secretary of state will dissolve such defaulting corporations;

(b) such corporations will forfeit the amount of any tax, penalty, or costs to the state of Montana; and

(c) such corporations will forfeit their rights to carry on business within the state.

(4) Immediately after the first Monday in March, the secretary of state may, by order, dissolve all corporations which have not satisfied the requirements of applicable law and compile a full and complete list containing the names of all corporations that have been so dissolved. The secretary of state shall immediately give notice to the dissolved corporation as specified in subsection (2) of this section.

(5) In the case of involuntary dissolution, all the property and assets of the dissolved corporation shall be held in trust by the directors of such corporation and 15-2290 or 15-2354, whichever is appropriate, is applicable to liquidate such property and assets if necessary.

**History:** En. 15-2703 by Sec. 3, Ch. 455,  
L. 1977.

**15-2704. Reinstatement of defaulting corporations—duties of secretary of state—application and fees.** (1) The secretary of state may:

(a) reinstate any corporation which has been dissolved under the provisions of this chapter; and

(b) restore to such corporation its right to carry on business in this state and to exercise all its corporate privileges and immunities.

(2) A corporation applying for reinstatement shall submit to the secretary of state in duplicate an application signed by its authorized representative setting forth:

(a) the name of the corporation;

(b) a statement that the assets of the corporation have not been liquidated pursuant to 15-2290 or 15-2354;

(c) a statement that not less than a majority of its directors have authorized the application for reinstatement; and

(d) if its corporate name has been legally acquired by another corporation prior to its application for reinstatement, the corporate name under which the corporation desires to be reinstated.

(3) The corporation shall submit with its application for reinstatement:

(a) a certificate from the department of revenue stating that all taxes imposed pursuant to Title 84 have been paid; and

(b) a filing fee in an amount equal to one-half of the filing and license fees which the corporation would be required to pay if the corporation were filing its articles of incorporation.

(4) When all requirements are met and the secretary of state reinstates the corporation to its former rights, he shall:

(a) conform and file in his office reports, statements, and other instruments submitted for reinstatement; and

(b) immediately issue and deliver to the corporation so reinstated a certificate of reinstatement authorizing it to transact business; and

(c) upon demand, issue to the corporation one or more certified copies of such certificate of reinstatement.

(5) Any restoration of corporate rights pursuant to this act relate back to the date the corporation was involuntarily dissolved and the corporation



shall be considered to have been an existing legal entity from the date of its original incorporation.

(6) The secretary of state may not order a reinstatement if 5 years have elapsed since the dissolution.

**History:** En. 15-2704 by Sec. 4, Ch. 455,  
L. 1977.

**15-2705. Acquisition of new name by defaulting corporation upon reinstatement.** In all cases where a corporation is dissolved under the provisions of this chapter or has, prior to July 1, 1977, been dissolved under other law and the corporate name of that corporation has been legally acquired by another corporation prior to the application for reinstatement of such dissolved corporation, such dissolved corporation shall in its application for reinstatement submit to the secretary of state some other name under which it desires its corporate existence to be reinstated. If that name is sufficiently distinctive and different from all existing corporations, the secretary of state shall issue to such reinstated corporation a certificate of reinstatement under the new name.

**History:** En. 15-2705 by Sec. 5, Ch. 455,  
L. 1977.

**15-2706. Applicability to corporations presently in default.** The secretary of state may initiate procedures consistent with this act to dissolve corporations that have been in default prior to July 1, 1977.

**History:** En. 15-2706 by Sec. 6, Ch. 455,  
L. 1977.



## TITLE 16—COUNTIES

### Chapter

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4. Location of county seats, 16-402, 16-412.
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## CHAPTER 2—COUNTY BOUNDARIES

### 16-216. (4320) Gallatin County.

#### Proposed Amendment

Section 1, Ch. 447, Laws 1977, proposes

to amend this section to expand the boundaries of Gallatin County to include



contiguous portions of Yellowstone national park. The amendment, following the words "when the same is surveyed" near the end of the section, substitutes "to the boundary line with the state of Wyoming; thence west along the boundary line between Montana and Wyoming to the Northwest corner of the state of Wyoming; thence south along the boundary line between Montana and Wyoming to an intersection with the continental divide, the same being the point of intersection of the boundaries of Montana, Wyoming, and Idaho" for "to the north boundary of the Yellowstone national park; thence west along the said north boundary to the northwest corner of the Yellowstone national park; thence south along the west boundary of the Yellowstone national park to its intersection with the continental divide, the same be-

ing the boundary line between the state of Montana and the state of Idaho."

Section 3 of Ch. 447, Laws 1977, provides: "The question of whether the boundaries of Gallatin County or Park County shall be changed as provided in [sections 1 and 2] shall be placed on the ballot in each of the respective counties. The registrar of each affected county shall designate a place to register and vote for eligible persons located in the areas proposed for inclusion in the county. If approved, by a majority of those voting on the question in the county affected and area proposed for inclusion in that county, the amendments in [sections 1 and 2] become effective upon approval.

Section 4 of Ch. 447, Laws 1977, provided the act should be effective on its passage and approval. Approved April 19, 1977.

### 16-234. (4337) Park County.

#### Proposed Amendment

Section 1, Ch. 447, Laws 1977, proposes to amend this section to expand the boundary of Park County to include contiguous portions of Yellowstone national park. The amendment, following the words "when the same is surveyed," near the end of the section, deletes "to the north boundary of the Yellowstone national park, and thence east along the north boundary line of the Yellowstone national park to the northeast corner thereof; thence south along the east boundary line of the Yellowstone national park."

Section 3 of Ch. 447, Laws 1977, provides "The question of whether the boundaries of Gallatin County or Park County

shall be changed as provided in [sections 1 and 2] shall be placed on the ballot in each of the respective counties. The registrar of each affected county shall designate a place to register and vote for eligible persons located in the areas proposed for inclusion in the county. If approved, by a majority of those voting on the question in the county affected and area proposed for inclusion in that county, the amendments in [sections 1 and 2] become effective upon approval.

Section 4 of Ch. 447, Laws 1977, provided the act should be effective on its passage and approval. Approved April 19, 1977.

## CHAPTER 3—REMOVAL OF COUNTY SEATS

### Section

16-302. Submission to electors.

16-305. Publication of result.

**16-302. (4370) Submission to electors.** If the petition is signed by at least fifty per cent (50%) of the qualified electors of such county, the board of county commissioners must at the next general election submit the question of removal to the electors of the county; provided, that for the purpose of testing the sufficiency of any petition which may be presented to the county commissioners as provided in this section, the county commissioners shall compare such petition with the pollbooks in the county clerk's office constituting the returns of the last general election held in their county, for the purpose of ascertaining whether such petition bears the names of at least fifty per cent (50%) of the voters listed therein; and if such petition then shows that it has not been signed by at least fifty per cent (50%) of the voters of the county, after deducting from the said original petition the names of all persons who may have signed such original

petition, and who may have filed, or caused to be filed, with the county clerk of said county or the board of county commissioners, on or before the date fixed for the hearing, their statement in writing of the withdrawal of their names from the original petition, it shall be deemed insufficient, and the question of the removal of the county seat shall not be submitted.

**History:** En. Sec. 4158, Pol. C. 1895; amd. Sec. 2, p. 146, L. 1901; re-en. Sec. 2352, Rev. C. 1907; amd. Sec. 2, Ch. 10, L. 1919; re-en. Sec. 4370, R. C. M. 1921; amd. Sec. 1, Ch. 406, L. 1973. Cal. Pol. C. Sec. 3977.

ture requirement from 65% of the taxpayers of the county to 50% of the qualified electors; deleted a definition of taxpayers; and deleted provision for comparing the names on the petition with those on the assessment roll.

#### Amendments

The 1973 amendment changed the signa-

**16-305. (4373) Publication of result.** When the returns have been received and compared, and the results ascertained by the board, if a majority of the qualified electors voting on the question have voted in favor of any particular place, the board must give notice of the results by posting notices thereof in all the election precincts of the county, and by publishing a like notice in a newspaper printed in the county at least once a week for four weeks.

**History:** En. Sec. 3, p. 146, L. 1901; re-en. Sec. 2355, Rev. C. 1907; amd. Sec. 1, Ch. 27, L. 1921; re-en. Sec. 4373, R. C. M. 1921; amd. Sec. 2, Ch. 406, L. 1973. Cal. Pol. C. Sec. 3981.

#### Amendments

The 1973 amendment inserted "voting on the question" following "majority of the qualified electors."

### CHAPTER 4—LOCATION OF COUNTY SEATS

#### Section

16-402. Designation of temporary county seat—special election.

16-412. Submission of question of locating permanent county seat to voters—elections.

**16-402. (4379) Designation of temporary county seat—special election.**  
(1) to (3). \* \* \* [Same as parent volume.]

(4) Provided, however, that at any time within six months after the passage of an act creating a new county, a petition or petitions may be filed with the county clerk of the board of county commissioners of such county asking the board to submit the question of the location of the permanent county seat to the electors of the county at a special election to be called and held in the manner hereinafter in this act provided. Said petition or petitions must contain in the aggregate the names of at least one hundred qualified electors whose names also appear as registered electors in some registration district established and existing in the territory embraced in the new county at the last general election held therein.

(5) The petition or petitions when filed with the board must also have certificates attached thereto from the county clerk of the county in which the person or persons signing the petition resided before the creation of the new county, certifying that the names of the persons signing said petition or petitions appear in the registration books of his

county containing the names of the electors registered in the last general election in the districts now embraced in the new county.

**History:** En. Sec. 2, Ch. 135, L. 1911; re-en. Sec. 4379, R. C. M. 1921; amd. Sec. 3, Ch. 406, L. 1973.

#### Amendments

The 1973 amendment substituted "qualified electors" in the second sentence of

subsection (4) for "taxpayers, whose names appear upon the assessment books containing the last assessment of the property situated in such new county, and"; and deleted "in the last assessment books of his county, and also" before "in the registration books" in subsection (5).

### 16-405. (4382) Repealed.

#### Repeal

Section 16-405 (Sec. 5, Ch. 135, L. 1911; Sec. 1, Ch. 119, L. 1971), relating to registration of electors, was repealed by

Sec. 58, Ch. 100, Laws 1973. Section 4, Ch. 406, Laws of 1973 purported to amend this section. Such amendment was void under the provisions of section 43-515.

**16-412. (4389) Submission of question of locating permanent county seat to voters—elections.** Any county heretofore created, in which the permanent county seat has not been located by valid election held for the purpose of locating the permanent county seat of said county, may have a special election, for the purpose of voting on such question, called and held under the provisions of this act, or if no special election is held for such purpose, then said question shall be submitted by the county commissioners at the next general election after the passage of this act and in the manner provided herein for the submission of such questions at general elections; provided, however, that no special election shall be called for the purpose of submitting such question unless a petition or petitions containing in the aggregate the names of one hundred electors of such county, whose names appear on the last registration books of said county, are filed with the clerk of the board of county commissioners within six months after the passage and approval of this act.

Upon the filing of such petition or petitions within said time, containing the requisite number of electors, which must be ascertained by the board from the records of said county, said board must immediately call such special election as herein provided.

If registration districts and polling precincts have already been established in said county, they shall remain the same for such special election, but a new registration shall be had and said special election conducted and the result determined as in this act provided.

The provisions of this section shall not apply in any case where there has been a permanent county seat located and maintained for a period of three years from the date immediately subsequent to the date of the approval of this act, whether the same was located by a legal election or otherwise.

**History:** En. Sec. 12, Ch. 135, L. 1911; re-en. Sec. 4389, R. C. M. 1921; amd. Sec. 5, Ch. 406, L. 1973.

#### Amendments

The 1973 amendment deleted "taxpay-

ing" before "electors" in the proviso to the first paragraph and again in the second paragraph; and deleted "upon the last assessment book, and also" after "whose names appear" in the proviso to the first paragraph.



## CHAPTER 5—CREATION OF NEW COUNTIES BY PETITION AND ELECTION

## Section

- 16-501. Creation of new counties—debts and assets prorated—minimum area and valuation.
- 16-502. Basis of taxation upon creation of new county—terms used in law defined.
- 16-504. Petition for creation of new county—attached affidavits—notice and hearing.
- 16-505. Duty of commissioners when findings justify new county—division into township, road and school districts—change of boundaries of election precincts—election—temporary county seat.
- 16-506. Measures to be taken after election—officers—effect of adverse vote.
- 16-507. Officers of new county—judicial district.
- 16-514. School and road funds.

**16-501. (4390) Creation of new counties—debts and assets prorated—minimum area and valuation.** New counties may from time to time be formed and created in this state from portions of one or more counties, which shall have been created and in existence for a period of more than two years, in the manner set forth and provided in this act; provided, however, that no new county shall be established which shall reduce any county to an assessed valuation of less than twelve million dollars (\$12,000,000.00), inclusive of all assessed valuation as shown by the last preceding assessment; nor shall any new county be established which shall reduce the area of any existing county from which territory is taken to form such new county, to less than twelve hundred square miles of surveyed land, exclusive of all forest reserve and Indian reservations within old counties nor shall any new county be formed which contains an assessed valuation of property less than ten million dollars (\$10,000,000.00), inclusive of all assessed valuation as shown by the last preceding assessment, of the county or counties from which such new county is to be established, nor shall any new county be formed which contains less than one thousand square miles of surveyed land exclusive of all forest reserve land or Indian reservations, not open for settlement, nor shall any line thereof pass within fifteen miles of the courthouse situate at the county seat of the county sought to be divided; provided, that such county line may be run within a distance of ten miles of a county seat in cases where the natural contour of the county, by reason of mountain ranges or other topographical conditions, is such as to make it difficult to reach the county seat, and in such cases a petition, signed by at least fifty per centum (50%), of the voters in the proposed new county, shall be presented to the judge of the district court in which the county affected is located, asking for the appointment of a commission of five (5) disinterested persons, who shall determine if the topographical conditions are such as to warrant the fixing of the county division lines closer than at fifteen miles from the county seat, as such boundaries are legally fixed and determined at the date of the filing of the petition or petitions referred to in section 16-504 of this code.

Every county which shall be enlarged or created from the territory taken from any other county or counties shall be liable for a prorata proportion of the existing debts and liabilities of the county or counties from which such territory shall be taken, and shall be entitled to a prorata proportion of the assets of the county or counties from which such territory is taken, to be determined as provided by sections 16-502, 16-503 and 16-511.

**History:** En. Sec. 1, Ch. 226, L. 1919; re-en. Sec. 4390, R. C. M. 1921; amd. Sec. 1, Ch. 106, L. 1929; amd. Sec. 6, Ch. 406, L. 1973.

#### Amendments

The 1973 amendment reduced the signature requirement in the second proviso to the first paragraph from 58% to 50%.

**16-502. (4391) Basis of taxation upon creation of new county—terms used in law defined.** For the purposes of this act, the assessed valuation of all property, whether included within the boundaries of a proposed new county or remaining within the boundaries of any existing county or counties from which territory is taken, shall be fixed and determined on the same basis as is used for the imposition of taxes in the state of Montana.

**History:** En. Sec. 1, Ch. 16, Ex. L. 1919; re-en. Sec. 4391, R. C. M. 1921; amd. Sec. 34, Ch. 566, L. 1977.

#### Amendments

The 1977 amendment deleted "to wit:

By taking that percentage of the true and full value of all taxable property in any county specified by section 84-302" at the end of the section; deleted a second paragraph which defined assessed valuation; and made minor changes in punctuation.

**16-504. (4393) Petition for creation of new county—attached affidavits—notice and hearing.** (1) Whenever it is desired to divide any county or counties and form a new county out of a portion of the territory of such then existing county or counties, a petition shall be presented to the board of county commissioners of the county from which the new county is to be formed, in case said proposed new county is to be formed from but one county, or to the board of county commissioners of the county from which the largest area of territory is proposed to be taken for the formation of such new county, in case said new county is to be formed from portions of two or more existing counties; and such board of county commissioners shall be empowered and have jurisdiction to do and perform all acts provided for to be done or performed in this act, for each of the several counties from which any proposed territory is to be taken, and shall direct that a certified copy of all orders and proceedings had before such board of county commissioners shall be certified by the county clerk to the board of county commissioners of each of the several counties from which any territory is taken by the proposed new county; and all officers of any such county shall comply with the orders of the board of county commissioners, in the same manner as if said order had been duly made by the board of county commissioners of each respective county from which territory is proposed to be taken. Such petition shall be signed by at least fifty per cent (50%) of the qualified electors of the proposed new county, whose names appear on the official registration books and who are shown thereon to have voted at the last general election preceding the presentation of said petition to the board of county commissioners as herein provided; provided, that in cases where the proposed new county is to be formed from portions of two or more counties, separate petition shall be presented from the territory taken from each county; and each of said separate petitions shall be signed by at least fifty per cent (50%) of the qualified electors of each of said proposed portions. Such signatures need not all be appended to one paper, but may be signed to several petitions which must be similar in form, and when so signed the several petitions may be fastened together and shall be treated and presented as one petition.



(2) Such petition or petitions shall contain:

1 to 6. \* \* \* [Same as parent volume.]

There shall be attached and filed with said petition or petitions an affidavit of five qualified electors residing within each county sought to be divided, to the effect that they have read said petition and examined the signatures affixed thereto, and they believe that the statements therein are true, and that it is signed by at least fifty per cent (50%) of the qualified electors as herein provided, of the proposed new county, or of the proposed portion thereof, taken from each existing county, where the proposed new county is to be formed from portions of two or more existing counties; that the signatures affixed thereto are genuine; and that each of such persons so signing was a qualified elector of such county therein sought to be divided, at the date of such signing. Such petition or petitions so verified, and the verification thereof, shall be accepted in all proceedings permitted or provided for in this act, as prima facie evidence of the truth of the matters and facts therein set forth. Upon the filing of such petition or petitions and affidavits with the clerk of the said board of county commissioners, said clerk shall forthwith fix a date to hear the proof of the said petitions and of any opponents thereto, which date must be not later than thirty days after the filing of such petition with the clerk of said board. The county clerk shall also, at the same time, designate a newspaper of general circulation published in the old counties, but not within the proposed new county, and also a newspaper of general circulation published within the boundaries of the proposed new county, if there be such, in which the said county clerk shall order and cause to be published, at least once a week for two weeks next preceding the date fixed for such hearing, a notice in substantially the following form:

#### Notice

Notice is hereby given that a petition has been presented to the board of county commissioners of ..... county (naming the county represented by the board of county commissioners with which said petition was filed), praying for the formation of a new county out of portion of the said ..... county and ..... county (naming the county or counties of which it is proposed to form the new county), and that said petition will be heard by the said board of county commissioners at its place of meeting (designating the city or town and the day and hour of the meeting so to be held), and when and where all persons interested may appear and oppose the granting of said petition, and make any objections thereto.

Dated at ..... at ..... Montana.

....., County Clerk.

Said petitioners shall, on or before the date fixed for said hearing, file with the said board of county commissioners a bond to be approved by said board, in an amount of five thousand dollars, payable to the county in which said petition is filed, conditioned that the obligors named in said bond will pay to said county all expenses incurred in the election provided for in this act, not exceeding the amount specified in said bond, in the event that at the election herein provided for more than fifty per cent



(50%) of the votes cast at said election are "for the new county of ----- (naming the proposed new county)," "No."

(3). \* \* \* [Same as parent volume.]

(4) The board of county commissioners, on the final hearing of such petition or petitions, shall, by a resolution entered on its minutes, determine:

1. \* \* \* [Same as parent volume.]

2. Whether the said petition contains the genuine signatures of at least fifty per cent (50%) of the qualified electors of the proposed new county as herein required, or in cases where separate petitions are presented from portions of two or more existing counties as herein required, whether each petition is signed by at least fifty per cent (50%) of the qualified electors of that portion of each of such existing counties which it is proposed to take into the proposed new county.

3 to 8. \* \* \* [Same as parent volume.]

(5) On final hearing the board of commissioners, upon petition of not less than fifty per cent of the qualified electors (as shown by the official registration books on the day of the filing of any such petition) of any territory lying within said proposed new county contiguous to the boundary line of the said proposed new county, and of the old county from which such territory is proposed to be taken, and lying entirely within a single old county and described in said petition, asking that said territory be not included within the proposed new county, must make such changes in the proposed boundaries as will exclude such territory from such new county, and shall establish and define such boundaries. On final hearing the board of commissioners, upon petition of not less than fifty per cent of the qualified electors of any territory lying outside said proposed new county, and contiguous to the boundary line of said proposed new county, and of the old county or counties from which such territory is proposed to be included, asking that said territory be included within the proposed new county, must make such changes in the proposed boundaries as will include such territory in such new county, and shall establish and define such boundaries; provided, however, that the segregation of such territory from any old county or counties shall not leave such county or counties with less than twelve million dollars of assessed valuation, based upon the last assessment roll; provided, that no change or changes so made shall result in reducing the valuation of the proposed new county to less than an assessed valuation of ten million dollars, inclusive of all assessed valuation; and provided, further, that no change shall be made which shall leave the territory so excluded separate and apart from and without the county of which it was formerly a part. Petitions for exclusion shall be disposed of in the order in point of time in which they are filed with the clerk of the board of county commissioners, and on final determination of boundaries no changes in the boundaries originally proposed shall be made except as prayed for in said petition or petitions, or to correct clerical errors or uncertainties.

History: En. Sec. 2, Ch. 226, L. 1919;  
re-en. Sec. 4393, R. C. M. 1921; amd. Sec.  
7, Ch. 406, L. 1973.

#### Amendments

The 1973 amendment reduced signature requirements for petitions from 58% to

50% in subsections (1), (2) and (4); increased from 42% to 50% the vote required to defeat the petition in the last paragraph of subsection (2); and deleted the requirement that petitioners be tax-

payers from the first sentence of the paragraph preceding the Notice in subsection (2), and from the second sentence of subsection (5).

**16-505. (4394) Duty of commissioners when findings justify new county—division into township, road and school districts—change of boundaries of election precincts—election—temporary county seat.** (1) If the said board of county commissioners determine that the formation of said proposed new county will not reduce any county from which any territory is taken to an assessed valuation of less than twelve million dollars, inclusive of the assessed valuation, nor the area thereof to less than twelve hundred square miles of surveyed land, and that the proposed new county contains property of an assessed valuation of at least ten million dollars, inclusive of all assessed valuation, and that the proposed new county has an area of at least one thousand square miles of land, and that no line of said proposed new county passes within fifteen miles of the courthouse situate at the county seat of any county proposed to be divided, except as hereinbefore provided, and that said petition contains the genuine signatures of at least fifty per cent (50%) of the qualified electors of the proposed new county, or in cases where separate petitions are presented from portions of two or more existing counties (as herein required), that each of said petitions contain the genuine signatures of at least fifty per cent (50%) of the qualified electors of that portion of the proposed new county from which it is taken, then the said board of county commissioners shall divide the proposed new county into a convenient number of township, road, and school districts, and define their boundaries and designate the names of such districts.

(2). \* \* \* [Same as parent volume.]

(3) Within two weeks after its determination of the truth of the allegations of said petition as aforesaid, the said board of county commissioners shall order and give proclamation and notice of an election to be held on a specified day in the territory which is proposed to be taken for the new county, not less than ninety days nor more than one hundred and twenty days thereafter, for the purpose of determining whether such territory shall be established and organized into a new county; and for the election of officers and location of a county seat therefor, in case the vote at such election shall be in favor of the establishment and organization of such new county. All qualified electors residing within the proposed new county who are qualified electors of the county or counties from which territory is taken to form such proposed new county, and who are registered under the provisions of the registration laws of the state, shall be entitled to vote at said election. Registration and transfers of registration shall be made and shall close in the manner and at a time provided by law for registration and transfers of registration for a general election in the state of Montana.

(4) to (7). \* \* \* [Same as parent volume.]

All returns of election herein provided for shall be made to the board of county commissioners calling such election.



All nominations of candidates for the office required to be filled at said election shall be made in the manner provided by law for the nomination of candidates by petition.

The provisions of the election laws relating to preparation, printing, and distribution of sample ballots, except the provisions of said laws relating to primary elections in this state, shall have application to any election provided for in this act.

History: En. Sec. 3, Ch. 226, L. 1919; re-en. Sec. 4394, R. C. M. 1921; amd. Sec. 8, Ch. 406, L. 1973.

#### Amendments

The 1973 amendment reduced the signature requirement on petitions from 58% to 50% of the qualified electors in sub-

section (1); and deleted "and who have resided within the limits of the proposed county for a period of more than six months next preceding the day of the election" following "territory is taken to form such proposed new county" in the second sentence of subsection (3).

**16-506. (4395) Measures to be taken after election—officers—effect of adverse vote.** (1) If, upon the canvass of the votes cast at such election, it appears that more than fifty per cent (50%) of the votes cast are "For the new county of .....", "Yes," the board of county commissioners shall, by a resolution entered upon its minutes, declare such territory duly formed and created as a county of this state, of the class to which the same shall belong, under the name of ..... county, and that the city or town receiving the highest number of votes cast at said election for county seat shall be the county seat of said county until removed in the manner provided by law, and designating and declaring the person receiving respectively the highest number of votes for the several offices to be filled at said election, to be duly elected to such offices. Said board shall forthwith cause a copy of its said resolution, duly certified, to be filed in the office of the secretary of state, and ninety days from and after the date of such filing said new county shall be deemed to be fully created, and the organization thereof shall be deemed completed, and such officers shall be entitled to enter immediately upon the duties of their respective offices upon qualifying in accordance with law and giving bonds for the faithful performance of their duties, as required by the laws of the state. The clerk of the board of county commissioners with which said petition was filed, as herein provided, must immediately make out and deliver to each of said persons so declared and designated to be elected, a certificate of election authenticated by his signature and the seal of said county. The persons elected members of the board of county commissioners and the county clerk shall immediately, upon receiving their certificates of election, assume the duties of their respective offices.

(2) The board of county commissioners shall have authority to provide a suitable place for the county officers, and to purchase such supplies as may be deemed necessary for the proper conduct of the county government. All other officers take office ninety days after the filing of the resolution herein provided for with the secretary of state. All the officers elected at said election, or appointed under this act, shall hold their offices until the time provided by general law for the election and qualification of such officers in this state, and until their successors are elected and qualified, and for the purpose of determining the term of office of such officers, the years



said officers are to hold office are to be computed respectively from and including the first Monday after the first day of January following the last preceding general election. If, however, upon such canvass it appears that more than fifty per cent (50%) of the votes cast at said election are "For the new county of .....", "No," the board of county commissioners canvassing said vote as provided herein shall pass a resolution in accordance therewith, and thereupon the proceedings relating to division of such county or counties shall cease; and no other proceedings in relation to any other division of said old county or counties shall be instituted for at least two years after such determination.

History: En. Sec. 4, Ch. 226, L. 1919; re-en. Sec. 4395, R. C. M. 1921; amd. Sec. 9, Ch. 406, L. 1973.

to a simple majority at the beginning of subsection (1); and accordingly increased, in the last sentence of subsection (2), the percentage of the vote necessary to defeat the petition from 42% to more than 50%.

#### Amendments

The 1973 amendment reduced the votes necessary to create a county from 58%

**16-507. (4396) Officers of new county—judicial district.** At the election provided for in section 16-505 of this code, there shall be chosen such county, township, and district officers as are now or may hereafter by general law be provided for in counties of the class to which the said new county is determined to belong, as herein provided; provided, that all duly elected, qualified and acting officers of the county or counties, who may reside within the proposed new county, shall be deemed to be officers of said new county if they file with the board of county commissioners, whose duty it shall be to call the election, within five days after the final hearing and determination of said petition for such proposed new county, their intention to become officers of said proposed new county, and the board of county commissioners issuing the proclamation of any election, as in this act provided, shall omit providing for the election of any such officers as may have filed their declaration as herein provided; and provided, also, that all duly elected, qualified, and acting justices of the peace residing within the proposed new county shall hold office as such justices of the peace in said county for the remainder of the term for which they were elected; provided, further, that all duly elected, qualified, and acting school trustees residing within the proposed new county at the time of the division of such county into school districts, as hereinbefore in section 16-505 provided, shall hold office as school trustees in said new county for the remainder of the term for which they were elected on qualifying as school trustees for the respective districts in which they reside, as said districts are organized as provided by this act. Each person elected or appointed to fill an office of such new county under the provisions of this act shall qualify in the manner provided by law for such officers, except as herein otherwise provided, and shall enter upon the discharge of the duties of his office within such time as herein provided, after the receipt of the certificate of his election. Each of such officers may take the oath of office before any officers authorized by the laws of the state of Montana to administer oaths, and the bond of any officer from which a bond is required shall be approved by any judge of the district court of the district to which such new county is attached for judicial purposes. The officers elected or appointed under

the provisions of this act shall each perform the duties and receive the compensation now provided by general law for the office to which he has been appointed or elected in the counties of the class to which such new county shall have been determined to belong, as herein provided under the general classification of counties in this state.

Said new county, when created and organized in pursuance of the provisions of this act, shall be attached to such judicial district as may be designated by the governor of the state of Montana, in a proclamation to be issued by him, designating such new county as attached to the particular judicial district for judicial purposes.

**History:** En. Sec. 5, Ch. 226, L. 1919; re-en. Sec. 4396, R. C. M. 1921; amd. Sec. 1, Ch. 253, L. 1975.

#### Amendments

The 1975 amendment deleted references to constables after "justices of the peace" in two places near the middle of the first sentence; deleted "at the time of the division of such county into townships, as

hereinbefore in section 16-505 provided" after "residing within the proposed new county" near the middle of the first sentence; and deleted "on qualifying as justices of the peace or constables for the respective townships in which they reside, when said townships are organized as provided in this act" after "remainder of the term for which they were elected" near the middle of the first sentence.

**16-514. (4401) School and road funds.** The county superintendent of schools of the old county, or each of the old counties, respectively, shall furnish the county superintendent of schools of the new county with a certification of the ANB in the different school districts in the territory set apart to form the new county, and shall certify to the board of county commissioners the amount due; and said board shall order a warrant drawn on the treasurer of the new county for all the money that is or may be due by any apportionment or otherwise to the different school districts embraced in the new county from his county; and the county treasurer shall certify to the county commissioners the amount due in the different road funds, and the county commissioners shall order a warrant drawn on the treasurer of their county in favor of the new county for all money that is or may be due by apportionment or otherwise to the different road and district funds in the territory set apart to form the new county from their county, which said amounts shall be properly credited in both counties. And whenever, in the formation of a new county, a road or school district has been divided, the board of county commissioners shall, by resolution, direct the treasurer to transfer the proper proportionate amount of the money remaining in the fund of such district to the treasurer of the new county.

**History:** En. Sec. 10, Ch. 226, L. 1919; re-en. Sec. 4401, R. C. M. 1921; amd. Sec. 1, Ch. 137, L. 1973.

#### Amendments

The 1973 amendment substituted "a cer-

tification of the ANB in the different school districts" for "a certified copy of the last school census of the different school districts" in the early part of the section.

## CHAPTER 8—GENERAL POWERS AND LIMITATIONS UPON COUNTIES

### Section

16-807. Limit of indebtedness.

16-808. Counties indebted beyond constitutional limit may operate on cash basis.



**16-807. (4447) Limit of indebtedness.** No county may become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding 18% of the taxable value of the property therein subject to taxation, as ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness. All bonds or obligations in excess of such amount given by or on behalf of the county are void. No county may incur indebtedness or liability for any single purpose to an amount exceeding \$40,000 without the approval of a majority of the electors thereof voting at an election to be provided by law, except as provided in 16-1407.1 and 16-1407.2.

**History:** En. Sec. 4196, Pol. C. 1895; re-en. Sec. 2876, Rev. C. 1907; re-en. Sec. 4447, R. C. M. 1921; amd. Sec. 1, Ch. 486, L. 1973; amd. Sec. 1, Ch. 19, L. 1975; amd. Sec. 35, Ch. 566, L. 1977.

#### Amendments

The 1973 amendment inserted "assessed" before "value of the taxable property therein" in the middle of the first sentence; and increased the amount specified in the second sentence from \$10,000 to \$40,000.

The 1975 amendment substituted "No county may" for "No county must" at the beginning of the first and second sentences; and added "except as provided in sections 16-1407.1 and 16-1407.2" to the end of the second sentence.

The 1977 amendment divided the former first sentence into two sentences; changed the limitation in the first sentence from 5% of assessed value to 18% of taxable value; and made minor changes in phraseology, punctuation and style.

#### Airport Commission

City-county airport commission which borrowed \$200,000.00 from the Aeronautics Commission without consent of electorate and which was obligated to repay a total sum of \$238,500.00 over a ten-year period had incurred a debt upon which an amount over \$10,000.00 was due each year and had violated Art. XII of the 1889 Constitution; resolution by airport commission which approved the loan and which obligated the

county to repay the Aeronautics Commission only \$10,000.00 did not bring the debt within the constitution since the commission was itself obligated and was an agent of the county. *Burlington Northern, Inc. v. Richland County*, 162 M 364, 512 P 2d 707, distinguished in — M —, 526 P 2d 999, 1002.

Board of county commissioners which overtaxed taxpayers in one year in order to provide a fund out of which expenses for capital improvements and remodeling of airport, which expenses exceeded \$21,000, clearly violated Art. XIII, § 5, 1889 Montana Constitution by incurring a liability for over \$10,000 without the approval of a majority of the electors of the county; county was not able to argue that "no indebtedness or liability" had been created because the money was already on hand. Extraordinarily high levy created a "reserve fund" to be used for capital improvements which is not allowable due to restriction in § 1-804 of reserve funds to improvement of surfaces of runways or ramps. *Burlington Northern Inc. v. Flathead County*, 162 M 371, 512 P 2d 710, distinguished in — M —, 526 P 2d 999, 1002.

#### Federal Revenue Sharing Funds

The expenditure of federal revenue sharing funds is not an indebtedness or liability of the county within the meaning of the statutory restriction. *Yovetich v. McClintock*, — M —, 526 P 2d 999.

**16-808. (4447.1) Counties indebted beyond constitutional limit may operate on cash basis.** In case the total indebtedness of a county, lawful when incurred, exceeds the limit of 18%, by reason of great diminution of taxable value, the county may conduct its business affairs on a cash basis and pay the reasonable and necessary current expenses of the county out of the cash in the county treasury and derived from its current revenue and under such restrictions and regulations as may be imposed by the board of county commissioners of the county by a resolution duly adopted and included in the minutes of the board. Nothing in this section restricts the right of the board to make the necessary tax levies for interest and



sinking fund purposes, and nothing in this section affects the right of any creditor of the county to pursue any remedy now given him by law to obtain payment of his claim.

**History:** En. Sec. 1, Ch. 93, L. 1935; amd. Sec. 2, Ch. 33, L. 1973; amd. Sec. 36, Ch. 566, L. 1977.

#### **Amendments**

The 1973 amendment substituted "assessed value" for "taxable value" near the beginning of the section; and deleted "pro-

vided in section 5 of article 13 of the Constitution of Montana," following "(5%)."

The 1977 amendment substituted "18%" in the first sentence for "5%"; substituted "taxable value" in the first sentence for "assessed value"; and made minor changes in phraseology, punctuation and style.

### **CHAPTER 9—COUNTY COMMISSIONERS—ORGANIZATION—MEETINGS—COMPENSATION**

#### **Section**

- 16-901. Board, how composed.
- 16-902.1. Commissioners shall district.
- 16-902.2. Filing of districts.
- 16-902.3. Elections.
- 16-902.4. Refund of fee.
- 16-902.5. Not applicable to counties with alternative forms of government.
- 16-910. Regular meetings—extra sessions.
- 16-912. Compensation of members of board.
- 16-913. Employment of personnel by the board of county commissioners.

**16-901. (4452) Board, how composed.** Each county may have a board of county commissioners, consisting of three members, whose term of office is six years.

**History:** En. Sec. 4210, Pol. C. 1895; re-en. Sec. 2881, Rev. C. 1907; re-en. Sec. 4452, R. C. M. 1921; amd. Sec. 1, Ch. 118, L. 1933; amd. Sec. 1, Ch. 123, L. 1973. Cal. Pol. C. Sec. 4022.

#### **Amendments**

The 1973 amendment substituted "may" for "must" before "have a board of county commissioners."

#### **16-902. (4453) Repealed.**

##### **Repeal**

Section 16-902 (Sec. 4211, Pol. C. 1895), relating to county commissioners as elec-

tors of their counties, was repealed by Sec. 5, Ch. 298, Laws of 1974.

**16-902.1. Commissioners shall district.** The board of county commissioners shall in every county of the state, following each federal decennial census, divide their respective counties into three (3) commissioner districts as compact and equal in population and area as possible. The district judge or judges of the said county shall review the action of the commissioners to determine whether or not such action meets the requirements of this section. Such apportionment may take place at any time for the purpose of equalizing in population and area such commissioner districts, however, no commissioner district shall at any time be changed to affect the term of office of any county commissioner who has been elected, and provided further, that no change in the boundaries of any commissioner district shall be made within six (6) months next preceding a general election.

**History:** En. 16-902.1 by Sec. 1, Ch. 298, L. 1974.

#### **Title of Act**

An act to establish county commissioner

districts; providing for the election of county commissioners at large until an optional or alternative form of government authorized by law has been adopted; repealing section 16-902, R. C. M. 1947; and providing an effective date.

#### **Time for Creation of Districts**

Section 6 of Ch. 298, Laws 1974 read

"The division of the counties into three (3) commissioner districts as provided for in section 1 [16-902.1] of this act shall not be accomplished until subsequent to January 1, 1975. The boundaries of existing commissioner districts shall be continued for the purposes of elections to be held in the year 1974."

**16-902.2. Filing of districts.** When such division of commissioner districts has been made, there shall be filed in the office of the county clerk and recorder of such county, a certificate designating the metes and bounds of the boundary lines and limits of each said commissioner district. The certificate shall be dated and signed by the district court judge or judges of the county.

**History:** En. 16-902.2 by Sec. 2, Ch. 298, L. 1974.

**16-902.3. Elections.** At each general election, the member or members of the board of county commissioners to be elected, shall be selected from the residents and electors of the district or districts in which the vacancy occurs, but the election of such member or members of the board shall be submitted to the entire electorate of the county, provided, however, that no one shall be elected as a member of said board who has not resided in said district for at least two (2) years next preceding the time when he shall become a candidate for said office.

**History:** En. 16-902.3 by Sec. 3, Ch. 298, L. 1974.

**16-902.4. Refund of fee.** Any candidate filing for the office of county commissioner prior to the effective date of this act that does not comply with the provisions of this act shall receive a refund of their filing fee.

**History:** En. 16-902.4 by Sec. 4, Ch. 298, L. 1974.

#### **Repealing Clause**

Section 5 of Ch. 298, Laws 1974 read  
"Section 16-902, R.C.M. 1947, is repealed."

**16-902.5. Not applicable to counties with alternative forms of government.** This act shall not apply to counties adopting an optional or alternative form of government authorized by law.

**History:** En. 16-902.5 by Sec. 7, Ch. 298, L. 1974.

vided the act should be in effect from and after its passage and approval. Approved March 25, 1974.

#### **Effective Date**

Section 8 of Ch. 298, Laws 1974 pro-

**16-910. (4462) Regular meetings—extra sessions.** The governing body of the county, except as may be otherwise required of them, may meet at the county seat of their respective counties at any time for the purpose of attending to county business. Commissioners may, by resolution and prior two days' posted public notice, designate another meeting time and place. The governing body of the county shall establish by resolution a regular meeting date and notify the public of that date.

**History:** Ap. p. Sec. 380, 5th Div. Rev. Stat. 1879; amd. Sec. 785, 5th Div. Comp. Stat. 1887; amd. Sec. 4220, Pol. C. 1895; re-en. Sec. 2891, Rev. C. 1907; amd. Sec. 1, Ch. 148, L. 1915; re-en. Sec. 4462, R. C. M. 1921; amd. Sec. 1, Ch. 35, L. 1929; amd. Sec. 1, Ch. 132, L. 1959; amd. Sec. 5, Ch. 391, L. 1973; amd. Sec. 1, Ch. 27, L. 1975. Cal. Pol. C. Sec. 4032.

#### Amendments

The 1973 amendment deleted "except when meeting as the county board of equalization as provided for by law" following "each and every month of the year" in the first sentence in order to implement article VIII, section 7 of the 1972 Constitution.

The 1975 amendment substituted "governing body of the county" for "board of

county commissioners" at the beginning of the first sentence; substituted "at any time for the purpose of attending to county business" at the end of the first sentence for "on the first and third Mondays of each and every month of the year for the purpose of allowing bills and attending to any other business that may regularly come before them, and may sit not exceeding three days at each session, except the December session, at which time they may sit not exceeding eight days"; and substituted the second and third sentences for a former second sentence, for which see parent volume.

#### Repealing Clause

Section 2 of Ch. 27, Laws 1975 read "Section 16-911, R. C. M. 1947, is repealed."

### 16-911. (4463) Repealed.

#### Repeal

Section 16-911 (Sec. 4221, Pol. C. 1895), relating to other meetings of the board of

county commissioners, was repealed by Sec. 2, Ch. 27, Laws 1975.

**16-912. (4464) Compensation of members of board.** (1) Each member of the board of county commissioners in counties of the first, second, third, and fourth class, shall receive an annual salary to be established by resolution of the board of county commissioners in an amount not to exceed the annual salary established in the schedule in section 25-605, R. C. M. 1947, for the clerk and recorder.

In addition, each member of the board of county commissioners in counties of the first, second, third and fourth class shall receive a mileage allowance as provided in section 59-801 for the distance necessarily traveled in going to and returning from the county seat and his place of residence each day that such trip is actually made, and while engaged in the performance of his official duties.

(2) Each member of the board of county commissioners in all other counties is entitled to a salary to be established by the board of county commissioners by resolution in an amount not to exceed \$40 per day for each day's attendance on the sessions of the board and a mileage allowance as provided in section 59-801 for the distance necessarily traveled in going to and returning from the county seat and his place of residence each day that such trip is actually made, provided, however, that any county commissioner whose place of residence is fifty (50) miles or more from the county seat, as measured by the usual route of travel, may elect to receive mileage as provided in this section or, in lieu of mileage, a sum of ten dollars (\$10) per day for each day's attendance on sessions of the board as expenses while engaged in the performance of his official duties, and no other compensation must be allowed. This section does not apply to counties that have adopted charter form of government.

**History:** En. Sec. 347, 5th Div. Rev. Stat. 1879; amd. Sec. 755, 5th Div. Comp. Stat. 1887; amd. Sec. 4222, Pol. C. 1895; re-en. Sec. 2893, Rev. C. 1907; re-en. Sec. 4464, R. C. M. 1921; amd. Sec. 1, Ch. 176, L. 1939; amd. Sec. 1, Ch. 4, L. 1949; amd.



Sec. 1, Ch. 100, L. 1951; amd. Sec. 1, Ch. 82, L. 1955; amd. Sec. 1, Ch. 238, L. 1957; amd. Sec. 1, Ch. 113, L. 1963; amd. Sec. 1, Ch. 260, L. 1965; amd. Sec. 1, Ch. 56, L. 1967; amd. Sec. 1, Ch. 223, L. 1967; amd. Sec. 1, Ch. 177, L. 1969; amd. Sec. 1, Ch. 415, L. 1973; amd. Sec. 6, Ch. 439, L. 1975; amd. Sec. 3, Ch. 493, L. 1977.

#### Amendments

The 1969 amendment raised the annual salaries in subsection (1) from \$6,500 to \$8,000, \$6,300 to \$7,500, \$6,100 to \$7,300 and \$6,000 to \$7,100; in subsection (2), raised the per diem compensation from \$25 to \$30 and inserted a \$4,000 per year maximum.

The 1973 amendment substituted the final clause of the first paragraph of subsection (1), beginning with "to be established" for the schedule formerly provided in that subsection; increased the mileage allowance from nine cents to 12 cents in

the second paragraph of subsection (1) and in the middle of subsection (2); substituted "a salary to be established by the board of county commissioners by resolution in an amount not to exceed thirty-five dollars (\$35)" for "thirty dollars (\$30)" near the beginning of subsection (2); deleted "but not to exceed four thousand dollars (\$4,000) per year" following "sessions of the board" near the beginning of subsection (2); and deleted subsection (3), which prohibited salary increases during the term of a county commissioner.

The 1975 amendment substituted "a mileage allowance as provided in section 59-801" for "twelve cents (\$.12) per mile" in subsections (1) and (2); and made a minor change in punctuation.

The 1977 amendment, in subsection (2), increased the per diem allowance from \$35 to \$40 and added the last sentence.

### 16-913. Employment of personnel by the board of county commissioners.

The board of county commissioners may employ such persons as it deems necessary to assist the board in the performance of its duties. Each board may adopt a resolution defining the qualifications, duties, salary and responsibilities of such persons.

**History:** En. Sec. 1, Ch. 309, L. 1973.

#### Title of Act

An act permitting the board of county

commissioners to hire administrative assistants and set their duties and salary; and amending section 16-2409, R. C. M. 1947.

## CHAPTER 10—GENERAL POWERS AND DUTIES OF COUNTY COMMISSIONERS

### Section

- 16-1007.1. County authorized to obtain property by trade or purchase from any city, town or political subdivision—appraisal unnecessary.
- 16-1008A. Erection and management of county buildings and other improvements.
- 16-1009. Sale of property.
- 16-1009.1. County authorized to sell or trade property to city, town or political subdivision—resolution and notice of intent.
- 16-1015. Taxation.
- 16-1031.1. Re-establishment of garbage and ash collection districts.
- 16-1031.2. Garbage and ash collection districts—special assessments.
- 16-1032. Lease of county property for hospital purposes.
- 16-1042. Depletion allowance reserve fund authorized.
- 16-1043. Moneys for depletion allowance reserve fund.
- 16-1044. Investment of depletion allowance reserve fund.
- 16-1045. Bonds and other obligations.
- 16-1046. Tax levy authorized.
- 16-1047. Limitation.

16-1007.1. County authorized to obtain property by trade or purchase from any city, town or political subdivision—appraisal unnecessary. A county shall have power to trade with, or purchase from, any city, town or political subdivision such property without an appraisal of the property traded or purchased.

**History:** En. Sec. 2, Ch. 302, L. 1969.

the purchase thereof, by a county without appraisal.

**Title of Act**

An act to permit counties power to sell or trade property to any city, town or political subdivision; and to provide for

**Cross-References**

Cities authorized to sell, trade or purchase property, secs. 11-964.1 and 11-964.2.

**16-1008A. (4465.8) Erection and management of county buildings and other improvements.** The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To cause to be erected, furnished and maintained a courthouse, jail, hospital, civic center, youth center, park buildings, museums, recreation centers, and any combination thereof, and such other public buildings as may be necessary.

The board of county commissioners shall have the power to create a commission for the management of such civic center, youth center, park buildings, museums, county parks, recreation centers, hospitals, or any combination of two (2) or more thereof. Such commission shall be composed of the chairman of the board of county commissioners and five (5) lay members to be appointed by the board of county commissioners, and their terms of office shall be respectively one (1) for one (1), two (2) for two (2), and two (2) for three (3) years, and on the expiration of such terms of one (1), two (2) and three (3) years, their successors shall hold for three (3) years each, and all of the above persons shall serve without compensation. In cases where a commission has been appointed, the commission together with the board of county commissioners shall have the power to employ a manager.

A county hospital so erected and furnished may be used for the hospitalization of the indigent sick of the county. Any county hospital which has heretofore been, or which may hereafter be, erected and furnished under the provisions of this act may also be used for the hospitalization of the nonindigent sick, provided said nonindigent sick pay a reasonable fee for such hospitalization, and provided further that, except in cases of emergency, there are no indigent sick needing hospitalization who would be deprived of hospitalization by reason of the use of said hospital facilities by nonindigents. The board of county commissioners of any county of this state which now has, or may hereafter acquire, title to a site and building, or buildings, suitable for county hospital purposes, shall have jurisdiction and power under such limitations and restrictions as are prescribed by law to furnish and equip such building, or buildings, for hospital purposes in accordance with and as provided by the provisions of this act.

**History:** En. Subd. 9, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 56, L. 1947; amd. Secs. 1, 2, Ch. 238, L. 1947; amd. Secs. 1, 2, Ch. 5, L. 1949; amd. Sec. 1, Ch. 76, L. 1957; amd. Sec. 1, Ch. 150, L. 1959; amd. Sec. 1, Ch. 130, L. 1973. See history of section 16-1001.

**Amendments**

The 1973 amendment eliminated the senior district court judge of the county, the chairman of the school board for the

district in which buildings are situated and the mayor of the city in the district from the commission provided for by the second paragraph; substituted the board of county commissioners in the second sentence of the second paragraph as the appointing authority for lay members in lieu of "the senior district court judge, the chairman of the board of county commissioners, the chairman of the school board for the district in which any of the above-named buildings are situated,



and the mayor of the city in such district"; and made minor changes in phraseology.

#### Contract Beyond Term of Office

The board of county commissioners has authority under this statute to build a rec-

reation center, and pursuant to this authority may enter into a construction contract that extends beyond the terms of office of the individual members of the board. *Yovetich v. McClintock*, — M —, 526 P 2d 999.

**16-1009. (4465.9) Sale of property.** (1) The board of county commissioners of the several counties in this state shall have the power to sell any property, real or personal, however acquired, belonging to the county, and which is not necessary to the conduct of the county's business or the preservation of its property. If the property, real or personal, sought to be sold, is reasonably of a value in excess of one hundred dollars (\$100.00) for real property or a value of two thousand five hundred dollars (\$2,500) for personal property, the sale shall be at public auction at the courthouse door after previous notice given by publication in a newspaper published in said county, notice to be published once a week for four (4) successive weeks and posted in five (5) public places in the county. The sale shall be for cash, or on such terms as the board of county commissioners may approve, provided at least twenty per cent (20%) of the purchase price shall be paid in cash. In all sales of property of a value in excess of one hundred dollars (\$100.00) for real property and of two thousand five hundred dollars (\$2,500) for personal property, there must before any sale be an appraisal thereof by the board and at a price representing a fair market value of such property, and such appraised value shall be stated in the notice of sale, provided, that whenever a county purchases equipment, as provided in section 16-1803, county equipment which is not necessary to the conduct of the county business may be traded in as part of the purchase price after appraisal as herein provided, or may be sold at public auction as herein provided, in the discretion of the board of county commissioners.

(2) The board of county commissioners shall have the power to sell any property, real or personal, however acquired, belonging to the county and which is not necessary to the conduct of the county's business or the preservation of its property, to the school district directly for its appraised value which shall represent a fair market value of such property without the necessity of a public auction. If the property to be sold to the school district is reasonably of a value in excess of one hundred dollars (\$100.00) for real property and of two thousand five hundred dollars (\$2,500) for personal property, notice of the sale shall be given by publication in a newspaper in said county, notice to be published once a week for four (4) successive weeks and posted in five (5) public places in the county.

(3) \* \* \* [Same as parent volume.]

(4) If no bid or offer is made for any property offered for sale at public auction, after appraisal and notice given, as provided herein, the board of county commissioners may, at any time thereafter, sell such property at private sale, and may on such private sale accept as the purchase price therefor an amount not less than ninety per cent (90%) of the appraised value thereof. All deferred payments on the purchase price of any



property sold, shall bear interest at the rate of six per cent (6%) per annum, payable annually and may be extended over a period of not more than five (5) years. If the property to be sold is reasonably of a value of less than one hundred dollars (\$100.00) for real property and two thousand five hundred dollars (\$2,500) for personal property, sale thereof may be had at either public or private sale, as in the discretion of the board of county commissioners, may appear to be to the best interests of the county. If it be at public sale, notice shall be given by posting in five (5) public places in the county at least five (5) days before the date of sale. No title to any property sold under the provisions hereof, shall pass from the county until the purchaser, or his assigns, shall have paid the full amount of the purchase price therefor, into the county treasury for the use and benefit of the county.

(5) and (6) \* \* \* [Same as parent volume.]

**History:** En. Subd. 10, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 30, L. 1953; amd. Sec. 1, Ch. 110, L. 1957; amd. Sec. 1, Ch. 120, L. 1967; amd. Sec. 1, Ch. 284, L. 1975. See history of section 16-1001.

#### **Amendments**

The 1975 amendment increased the maximum value for personal property to be sold from \$1000 to \$2,500 in subsections

(1), (2) and (4); and made a minor change in style.

#### **Industrial Development Projects**

Industrial Development Projects Act (11-4101 to 11-4110) is designed for special purpose and is therefore not limited by provision in this section that county not sell land except at public auction. Fickes v. Missoula County, 155 M 258, 470 P 2d 287.

**16-1009.1. County authorized to sell or trade property to city, town or political subdivision—resolution and notice of intent.** A county upon first passing a resolution of intent to do so and upon giving notice of such intent by publication once a week for three (3) weeks in a newspaper published in such city, town or county in which located, shall have power to sell or trade, as the interests of its inhabitants require, any property, however held or acquired, which is not necessary for the conduct of the county business, to any city, town, or political subdivision, without an ordinance, public notice, public auction, bids, or appraisal; proceeds, if any, shall be distributed according to law. Such transactions shall be made by resolution of county commissioners involved and entered in the minutes of the regular or special meetings.

**History:** En. Sec. 1, Ch. 302, L. 1969.

#### **Cross-References**

Cities authorized to sell, trade or purchase property, secs. 11-964.1 and 11-964.2.

### **16-1013. (4465.10) Examination and allowance of officers' accounts.**

#### **Board for County Prisoners**

Sheriff has no clear legal duty to provide board of county commissioners with detailed itemized account of county funds

received for furnishing board to prisoners of county jail. State ex rel. Lucier v. Murphy, 156 M 186, 478 P 2d 273.

**16-1015. (4465.10) Taxation.** The board of county commissioners has jurisdiction and power under such limitations and reservations as are prescribed by law to levy such tax annually on the taxable property of the county, for county purposes as may be necessary to defray the

current expenses thereof, including the salaries otherwise unprovided for, not exceeding twenty-seven (27) mills, on each dollar of the taxable valuation for any one (1) year for counties of the fourth, fifth, sixth and seventh classes, and twenty-five (25) mills on each dollar of the taxable valuation for any one (1) year for counties of the first, second and third classes and to levy such taxes as are required to be levied by special or local statutes.

**History:** En. Subd. 13, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 114, L. 1949; amd. Sec. 1, Ch. 169, L. 1951; amd. Sec. 1, Ch. 185, L. 1953; amd. Sec. 1, Ch. 69, L. 1955; amd. Sec. 1, Ch. 48, L. 1957; amd. Sec. 1, Ch. 212, L. 1959; amd. Sec. 1, Ch. 205, L. 1961; amd. Sec. 1, Ch. 33, L. 1963; amd. Sec. 1, Ch. 18, L. 1965; amd. Sec. 1, Ch. 128, L. 1967; amd. Sec. 1, Ch. 283, L. 1969; amd. Sec. 1, Ch. 503, L. 1973; amd. Sec. 1, Ch. 201, L. 1974. See history of section 16-1001.

#### Amendments

The 1969 amendment increased the maximum levy from 20 to 24 mills for counties of the fourth, fifth, sixth and seventh classes, and from 20 to 22 mills for counties of the first, second and third classes.

The 1973 amendment increased the maximum levies from 24 to 27 mills for the fourth, fifth, sixth and seventh classes, and from 22 to 25 mills for the first, second and third classes; and added a proviso to the end of the section that was deleted in 1974.

The 1974 amendment deleted from the end of this section a proviso reading "Provided, however, that after July 1, 1974, the mill levy shall not exceed twenty-four (24) mills in any county of the fourth, fifth, sixth and seventh classes or twenty-two (22) mills in any county of the first, second and third classes until the sales-ratio studies conducted by the department of revenue demonstrate that the average assessed value of single family dwellings equals or exceeds thirty-six per cent (36%) of full cash value."

### 16-1016. (4465.13) Repealed.

#### Repeal

Section 16-1016 (Subd. 14, Sec. 1, Ch. 100, L. 1931), granting the board of county

commissioners power to equalize assessments, was repealed by Sec. 113, Ch. 391, Laws 1973.

### 16-1030. (4465.27) Lease of county property.

#### Special Purpose Leases

Industrial Development Projects Act (11-4101 to 11-4110) is designed for special purpose and is not limited by pro-

vision in this section that county not make lease longer than ten years. *Fickes v. Missoula County*, 155 M 258, 470 P 2d 287.

### 16-1031. (4465.28) Repealed.

#### Repeal

Section 16-1031 (Subd. 29, Sec. 1, Ch. 100, L. 1931; Sec. 1, Ch. 108, L. 1947;

Sec. 1, Ch. 202, L. 1961), relating to garbage and ash collection, was repealed by Sec. 6, Ch. 136, Laws 1971.

**16-1031.1. Re-establishment of garbage and ash collection districts.** Any county that had created a garbage and ash collection district pursuant to the provisions of section 16-1031, R. C. M. 1947, prior to the repeal of said section, may continue to operate a garbage and ash collection district pursuant to this act.

**History:** En. 16-1031.1 by Sec. 1, Ch. 73, L. 1974.

#### Title of Act

An act to re-enact former section 16-1031, R. C. M. 1947, which was repealed by Section 6 of Chapter 136, Laws of 1971, to provide for an alternate method

to create garbage and ash disposal districts by counties which had created such districts prior to 1971, and providing for the method of creating, operating and financing said districts by a special assessment not to exceed three dollars (\$3) per month on the real property benefited by such service within such district.



**16-1031.2. Garbage and ash collection districts—special assessments.**

The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To create, abolish and change garbage and ash collection districts in thickly settled areas outside of the limits of incorporated cities and towns. Such districts shall be created under rules to be promulgated by said board, which rules shall provide for petition on the part of a majority of taxpayers residing within such areas, for the survey of proposed districts by the county health officer as to boundaries and methods for disposal of garbage and ashes within such districts. When such a district has been created under the authority of this section the county commissioners shall be authorized and empowered to provide for the maintenance and support thereof and for the purchase or leasing of land necessary for such purpose. The county commissioners may provide for the collection and disposal of garbage and ashes for such districts by entering into contracts with individual contractors or firms to perform such services under a system of rates approved by the commissioners. Such rates shall be applied on a fair and equal basis to all persons utilizing such garbage collection service within a district and all rates so established shall be in relation to the amount and matter of collection and disposal service provided to the various types of customers within a district; provided, however, that in no event shall any fee exceed the amount of three dollars (\$3) per month for a family residential unit. The board of county commissioners may collect the funds necessary to operate said district as herein provided by placing a special assessment on the owners of the real property benefited by such service, and shall collect the same with the general taxes, and such special assessment shall be a lien on said property so assessed.

**History:** En. 16-1031.2 by Sec. 2, Ch. 73,  
L. 1974.

**16-1032. (4465.29) Lease of county property for hospital purposes. (1)**

The board of county commissioners has jurisdiction and power under the limitations and restrictions prescribed by law to lease county buildings, equipment, furniture and fixtures, for hospital purposes, with full power of lessor, except as hereinafter limited, upon the terms and conditions as the board may decide upon. The rentals received under the lease or leases shall be paid into the general fund of the county.

(2) No lease may be made for a longer period than 5 years except in a case of financing bonds in accordance with 16-1045 through 16-1047 in which case the lease may terminate at the maturity date of the bonds sold and in which case bond payments may be made from lease receipts, nor may the board enter into a contract of lease without and until first having advertised in a newspaper published in the county at least once a week for 5 weeks that the buildings and equipment are for lease for hospital purposes.

**History:** En. Subd. 30, Sec. 1, Ch. 100,  
L. 1931; amd. Sec. 1, Ch. 80, L. 1977.

**Amendments**

The 1977 amendment inserted the subsection designations; deleted "and demise" after "prescribed by law to lease" in the

first sentence of subsection (1); substituted "may" for "shall" before "decide upon" at the end of the first sentence of subsection (1); substituted "No lease may" for "No such lease and demise shall" at the beginning of subsection (2); inserted the exception in subsection (2);



substituted "may" for "shall" before "the board enter into a contract of lease" in the middle of subsection (2); and made minor changes in phraseology, punctuation and style.

### 16-1037. County construction and operation of boarding home, etc.

#### Compiler's Notes

Section 106, Ch. 349, Laws 1974, substituted "department of health and en-

vironmental sciences" in this section for "state board of health."

**16-1042. Depletion allowance reserve fund authorized.** The governing body of any county in Montana may establish a depletion allowance reserve fund for the replacement and acquisition of property and equipment for county-operated hospitals and nursing homes created under sections 16-1008A, 16-1037, and 16-1040.

**History:** En. 16-1042 by Sec. 1, Ch. 365, L. 1975.

#### Title of Act

An act to permit counties to establish a depletion allowance reserve fund for county-operated hospitals and nursing homes.

**16-1043. Moneys for depletion allowance reserve fund.** (1) Moneys for the depletion allowance reserve fund may be derived from:

- (a) public and private grants;
- (b) moneys collected by the hospital or nursing home for which the fund is created, from or for indigent patients, that are in excess of the expenses incurred for the care of such patients;
- (c) before a grant-in-aid for any fiscal year may be made to a county under this provision of section 71-311, R. C. M. 1947, any moneys credited during that fiscal year to the depletion allowance reserve fund from the sources provided by section 16-1043 (1) (b) of this act shall be transferred to the county poor fund to be used for lawful poor fund expenditures. The amount of the grant-in-aid shall be determined after all sources of income available to the poor fund, including the depletion allowance reserve fund transfers, have been exhausted.

(2) The depletion allowance reserve fund may accumulate at the discretion of the governing body.

**History:** En. 16-1043 by Sec. 2, Ch. 365, L. 1975.

**16-1044. Investment of depletion allowance reserve fund.** The moneys held in the depletion allowance reserve fund may be invested as provided by law. All interest earned on the investments is credited to the depletion allowance reserve fund.

**History:** En. 16-1044 by Sec. 3, Ch. 365, L. 1975.

**16-1045. Bonds and other obligations.** (1) Notwithstanding any limitation imposed by law upon the bonded indebtedness of a county, a county constructing a hospital or nursing home under section 16-1008A may borrow money and issue its bonds therefor, including refunding bonds, in such form and upon such terms as it may determine, payable out of any revenues of the facility, including revenues derived from:

- (a) fees and payments for hospital or nursing home services,
- (b) taxes levied under section 16-1046,
- (c) grants or contributions from the federal government, or
- (d) any other sources.

(2) The bonds may be issued by resolution or resolutions of the county governing body without any limitation of amount except as follows:

(a) no such bonds may be issued at any time if the total amount of principal and interest to become due in any year on such bonds, and on any then outstanding bonds for which revenues from the same source or sources are pledged, exceeds the amount of such revenues to be received in that year as estimated in the resolution authorizing the issuance of the bonds; and

(b) the county shall be obligated to take all action necessary and possible to impose, maintain and collect rates, charges, rentals and taxes, if any are pledged, sufficient to make the revenues from the pledged source or sources in such year at least equal to the amount of such principal and interest due in that year.

They may be sold at public or private sale and shall bear interest at a rate or rates not exceeding 10% a year. Except as otherwise provided herein, any bonds issued pursuant to this act by a county shall be payable as to principal and interest solely from revenues of the county, and shall state on their face the applicable limitations or restrictions regarding the source or sources from which such principal and interest are payable.

(c) No such bonds may be issued by any county until the question of approval of the issuance of such bonds has been submitted to the qualified electors of the county at a general election or a special election called for that purpose by the governing body of the county and the majority of the electors voting on the question have voted in favor thereof. The notice and conduct of the election shall be governed to the extent applicable by sections 16-2024 and 16-2026. If a majority of the electors voting thereon vote against the issuance of such bonds the county shall have no authority to issue such bonds under this act.

(3) Bonds issued by a county pursuant to the provisions of this act are declared to be issued for an essential public and governmental purpose by a political subdivision within the meaning of section 54-4905(2)(a). The bonds may be for a 40 year period.

For the security of any such bonds, the county may by resolution make and enter into any covenant, agreement, or indenture and exercise any additional powers authorized to be made, entered into or exercised by a county. The sums required from time to time to pay principal and interest and to create and maintain a reserve for the bonds may be made payable from any and all revenues referred to in this act, prior to the payment of current costs of operation and maintenance of the facilities.

(4) The governing body of any county may, with respect to bonds issued pursuant to this act by the county, by resolution covenant that, in the event that at any time all revenues including taxes, appropriated and theretofore collected for such bonds are insufficient to pay principal or interest then due, it will levy a general tax upon all of the taxable property in the county for the payment of such deficiency and may further covenant

that at any time a deficiency is likely to occur within 1 year for the payment of principal and interest due on such bonds, it will levy a general tax upon all the taxable property in the county for the payment of such deficiency, and such taxes shall not be subject to any limitation of rate or amount applicable to other county taxes but shall be limited to a rate estimated to be sufficient to produce the amount of the deficiency. In the event more than one county is included in an authority issuing bonds pursuant to this act: the counties may apportion the obligation to levy taxes for the payment of or in anticipation of a deficiency in the revenues appropriated for such bonds in such manner as the counties shall determine. The resolution shall state the principal amount and purpose of the bonds and the substance of the covenant respecting deficiencies.

**History:** En. 16-1045 by Sec. 1, Ch. 511, L. 1975; amd. Sec. 1, Ch. 513, L. 1977.

#### Title of Act

An act authorizing a county to issue revenue bonds for the construction of a county hospital or nursing home; authorizing a levy on taxable property; and providing an immediate effective date.

#### Amendments

The 1977 amendment deleted "without an election, and" after "governing body" in the introductory paragraph of subsection (2); inserted subdivision (2)(c); deleted "having a population in excess of ten thousand (10,000)" after "county" near the beginning of the first and second sentences of subsection (4); deleted the last three sentences of subsection (4) which read: "No such resolution is effective

until the question of its approval has been submitted to the qualified electors of the county at a special election called for that purpose by the governing body of the county and a majority of the electors voting on the question have voted in favor thereof. The notice and conduct of the election shall be governed, to the extent applicable, by sections 16-2024 and 16-2026. If a majority of the electors voting thereon vote against approval of the resolution, the county shall have no authority to make the covenant or to levy a tax for the payment of deficiencies pursuant to this section, but such county may nevertheless issue bonds under this act payable solely from the sources referred to in subsection (1) of this section"; and made minor changes in punctuation and style.

**16-1046. Tax levy authorized.** In the event the bonds become delinquent or cannot be paid from ordinary revenues of the facility, a county which has issued bonds under section 16-1045 may levy taxes on all taxable property within the county in the manner provided for public hospital districts under sections 16-4309 and 16-4309.1, namely: three (3) mills not submitted to a vote of the people and three (3) additional mills approved by a vote of the people.

**History:** En. 16-1046 by Sec. 2, Ch. 511, L. 1975.

**16-1047. Limitation.** The authority granted under this act is available only to counties in which no hospital exists or in which the only existing hospital has been ordered closed or cannot be reasonably brought into compliance with the standards established by the department of health and environmental sciences under chapter 52, Title 69, R.C.M. 1947.

**History:** En. 16-1047 by Sec. 3, Ch. 511, L. 1975; amd. Sec. 2, Ch. 513, L. 1977.

#### Amendments

The 1977 amendment deleted "and which commence construction of a hospital prior to July 1, 1977" from the end of the section.

#### Effective Date

Section 4, Ch. 511, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved April 29, 1975.



## CHAPTER 11—SPECIAL POWERS AND DUTIES OF COUNTY COMMISSIONERS

## Section

- 16-1105. Appropriating money for advertising of county products authorized.
- 16-1131. Counties authorized to deed land for park to state, city, town, or United States—reversion of title.
- 16-1149. Destruction of insect pests by county commissioners.
- 16-1150. Compensation of appointees—manner of payment.
- 16-1151. Purchase or hiring of poison and equipment—manner of payment.
- 16-1152. Tax levy for payment of warrants.
- 16-1153. "Insect pest" defined.
- 16-1163. County commissioners may establish or acquire museums, etc.
- 16-1164. Tax levy for support of museums.
- 16-1175. Control of noxious rodents—co-operation.
- 16-1179. County-owned civic center, youth center, recreation center—tax levy for maintenance, operation, and equipping.
- 16-1182. Board of county commissioners may establish curfew for minors—administrative rules and regulations.
- 16-1183. Law enforcement officials to enforce act.
- 16-1184. Penalty—misdemeanor.
- 16-1185. Power of county to spend federal and state funds.
- 16-1186. Capital improvement fund authorized.
- 16-1187. Levies for fund.
- 16-1188. Limitations on fund expenditure.
- 16-1189. Investment of fund.

**16-1105. (4470.1) Appropriating money for advertising of county products authorized.** The board of county commissioners of any county may appropriate money from the general fund of the county for advertising the agricultural resources of the county, through the department of agriculture, or for assisting the department of agriculture in presenting exhibits of Montana products at fairs or expositions outside the state.

**History:** En. Sec. 1, Ch. 107, L. 1927; amd. Sec. 116, Ch. 218, L. 1974.

**Amendments**

The 1974 amendment deleted "commer-

cial, mining, manufacturing, labor or other" before "resources"; deleted "exposition exhibits committee of the state" before the first "department of agriculture"; and made minor changes in phraseology.

**16-1131. (4487.1) Counties authorized to deed land for park to state, city, town, or United States—reversion of title.** The county commissioners of any county in the state of Montana are hereby authorized to convey to the state of Montana or to any city or town in Montana or to the United States of America any tract of county-owned land not exceeding 1,280 acres, to be used for the establishment and maintenance of a park, recreational grounds, or cemetery and to be maintained by the state, city, town, or federal government as a public park, recreational grounds, or cemetery. Said land shall be deeded to the state, city, town, or federal government without charge but upon the condition that the same shall be devoted and maintained by the state, city, town, or federal government for the purpose specified in this act, and in the event that the land shall cease to be used for such purposes for a period of 5 years in succession, the title thereto shall revert to the county making such grant.

**History:** En. Sec. 1, Ch. 139, L. 1935; amd. Sec. 1, Ch. 48, L. 1961; amd. Sec. 1, Ch. 7, L. 1977.

**Amendments**

The 1977 amendment inserted "recrea-

tional grounds" after "maintenance of a park" in the first sentence; inserted "or cemetery" in two places in the first sentence; and made minor changes in phraseology, punctuation and style.

**Effective Date**

Section 2 of Ch. 7, Laws 1977 provided

the act should be in effect upon its passage and approval. Approved February 10, 1977.

**16-1149. (4501) Destruction of insect pests by county commissioners.**

The board of commissioners of any county of this state, where there are any insect pests, are hereby authorized and empowered to appoint some suitable person or persons, whose duty it shall be, acting under the direction of the state department of agriculture, to poison, kill, catch, and exterminate insect pests within such county, and any such person so appointed may fly over or enter upon any farm, railroad right of way, grounds or, premises infested with such insect pests and poison, kill, catch, and exterminate the insect pests therein.

**History:** En. Sec. 1, Ch. 227, L. 1921; re-en. Sec. 4501, R. C. M. 1921; amd. Sec. 7, Ch. 433, L. 1975.

**Amendments**

The 1975 amendment substituted "de-

partment of agriculture" for "entomologist"; and substituted "may fly over or enter upon any farm" for "is hereby empowered and directed to enter upon any farm."

**16-1150. (4502) Compensation of appointees—manner of payment.**

Any person so appointed under the provisions of section 16-1149 shall receive, such compensation as the county commissioners agree to pay, and warrants in payment thereof drawn on the general fund.

**History:** En. Sec. 2, Ch. 227, L. 1921; re-en. Sec. 4502, R. C. M. 1921; amd. Sec. 1, Ch. 25, L. 1923; amd. Sec. 8, Ch. 433, L. 1975.

**Amendments**

The 1975 amendment substituted "section 16-1149" for "this act"; substituted "such compensation as the county commissioners agree to pay" for a provision

for compensation in the amount of \$2.50 minimum and \$4.00 maximum for eight hours of specified labor; deleted the first part of a former second sentence requiring submission of a statement with the bill or claim against the county; and consolidated the first sentence and remainder of the former second sentence into one sentence. For prior version, see parent volume.

**16-1151. (4503) Purchase or hiring of poison and equipment—manner of payment.** The board of county commissioners of any county may, from time to time, purchase or contract to hire such quantities and amounts of poisons, traps and other equipment necessary to poison, kill, catch or exterminate such insect pests, and warrants in payment thereof shall be drawn on the general fund.

**History:** En. Sec. 3, Ch. 227, L. 1921; re-en. Sec. 4503, R. C. M. 1921; amd. Sec. 2, Ch. 25, L. 1923; amd. Sec. 9, Ch. 433, L. 1975.

**Amendments**

The 1975 amendment inserted "or contract to hire" after "purchase"; and deleted "carry out the provisions of this act" after "necessary to."

**16-1152. Tax levy for payment of warrants.** The governing body of the county shall annually determine the amount of the warrants drawn on the general fund for the purposes of controlling insect pests under a control program approved by the department of agriculture. In the succeeding year, the governing body shall levy a tax for the purpose of insect pest extermination sufficient to reimburse the general fund for the money paid out on the warrants. The tax shall be levied upon all the property in the county and shall not exceed 3 mills on each dollar of taxable value. If

there is no money in the general fund with which to pay such warrants, they shall be registered and bear interest in the same manner as other county warrants. In this case the interest shall be computed and added to the amount for which such tax is levied.

**History:** En. Sec. 4, Ch. 227, L. 1921; re-en. Sec. 4504, R. C. M. 1921; amd. Sec. 3, Ch. 25, L. 1923; amd. Sec. 10, Ch. 433, L. 1975; amd. Sec. 8, Ch. 362, L. 1977; amd. Sec. 37, ch. 566, L. 1977.

#### Compiler's Notes

This section was amended twice in 1977, once by Ch. 362 and once by Ch. 566. Since the amendments do not appear to conflict, the Code Commissioner has made a composite section embodying the changes made by both amendments.

#### Amendments

The 1975 amendment substituted "controlling insect pests under a cropland spraying program approved by the department of agriculture" for "this act" in the first sentence; and increased the tax from a maximum of one mill to a maximum of three mills.

Chapter 362, Laws of 1977, substituted "governing body of the county" near the

beginning of the section for "board of county commissioners"; substituted "control program" for "cropland spraying program" near the middle of the first sentence; and substituted "taxable valuation" for "assessed valuation" at the end of the first sentence.

Chapter 566, Laws of 1977, substituted "taxable value" for "assessed valuation" at the end of the third sentence (formerly the end of the first sentence); and made minor changes in phraseology, punctuation and style.

#### Separability Clause

Section 9 of Ch. 362, Laws 1977 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

**16-1153. (4505) "Insect pest" defined.** The term "insect pest" as used in this act shall include grasshopper, cutworm, pale western cutworm, army worm, chinch bug and any other insect or arthropod generally recognized as a destroyer of grain, hay, range, and horticultural crops.

**History:** En. Sec. 5, Ch. 227, L. 1921; re-en. Sec. 4505, R. C. M. 1921; amd. Sec. 11, Ch. 433, L. 1975.

#### Amendments

The 1975 amendment inserted "or arthropod" after "insect"; and inserted "range" after "hay."

#### Effective Date

Section 12, Ch. 433, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved April 14, 1975.

**16-1163. County commissioners may establish or acquire museums, etc.** The board of county commissioners of each county of the state, in addition to all other powers now conferred upon them, shall have authority to establish or acquire museums, and collections of exhibits, and articles, matters and things to be included in or added to such museums and collections. The word "museums" for the purposes of this act shall mean buildings, or parts of buildings, of which a principal purpose is the exhibition of objects of historical interest or of interest in one or more of the arts and sciences.

**History:** En. Sec. 1, Ch. 17, L. 1945; amd. Sec. 1, Ch. 173, L. 1975.

#### Amendments

The 1975 amendment substituted "commissioners of each county" for "commissioners of the several counties" in the first sentence; substituted "establish or ac-

quire" for "accept or acquire" in the first sentence; deleted "by gift or donation from individuals, associations and corporations, archaeological, geological and historical" between "acquire" and "museums" in the first sentence; and added the second sentence.



**16-1164. Tax levy for support of museums.** The board of county commissioners of any county now owning, or hereafter acquiring any such museum or collection of exhibits, may make an appropriation in its annual budget for the upkeep, care, maintenance, operation and support thereof, and to meet and take care of such appropriation may annually levy a tax of not to exceed one (1) mill on each dollar of the taxable valuation of the property subject to taxation in the county, which levy shall be made at the same time as other levies are made for county and school purposes. The proceeds from the collection of such levy shall be kept in a special fund by the county treasurer and used solely for the purpose for which such levy was made.

**History:** En. Sec. 2, Ch. 17, L. 1945; amd. Sec. 2, Ch. 173, L. 1975.

#### Amendments

The 1975 amendment increased the tax levy maximum from one-half mill to one mill.

**16-1175. Control of noxious rodents—co-operation.** The boards of county commissioners shall co-operate with the department of livestock in the control and suppression of noxious rodents and related animals, such as jackrabbits, prairie dogs, ground squirrels, pocket gophers, rats, mice, and other rodents and related animals when they are injurious to agriculture, other industries, and the public health in accordance with organized and systematic plans of the department of livestock covering the methods and procedures to be followed in the control and suppression of these noxious rodents and related animals. For this purpose the boards of county commissioners shall enter into written agreements with the department of livestock covering the methods and procedures to be followed in the control and suppression of these noxious rodents and related animals, the extent of supervision to be exercised by the board of county commissioners, and the use and expenditures of funds appropriated. The boards of county commissioners, in co-operation with the department of livestock may enter into co-operative agreements with state and federal governmental agencies, counties, associations, corporations, or individuals when co-operation is necessary to promote the control and suppression of noxious rodents and related animals.

**History:** En. Sec. 1, Ch. 122, L. 1949; amd. Sec. 47, Ch. 310, L. 1974; amd. Sec. 2, Ch. 242, L. 1975.

#### Amendments

The 1974 amendment substituted "department of livestock" for "Montana livestock commission" throughout the section and made minor changes in phraseology and punctuation.

The 1975 amendment deleted "and the United States department of the interior, fish and wildlife service" after "department of livestock" near the beginning of the first sentence; substituted "suppression" for "destruction" throughout the section; substituted "department of live-

stock" for "fish and wildlife service" after "systematic plans of the" in the first sentence; deleted references to "the fish and wildlife service" after references to the department of livestock in the second and third sentences and after "board of county commissioners" in the second sentence; substituted "state and federal governmental agencies" for "other governmental agencies" in the third sentence; and made minor changes in phraseology.

#### Effective Date

Section 3, Ch. 242, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved April 3, 1975.

**16-1179. County-owned civic center, youth center, recreation center—tax levy for maintenance, operation, and equipping.** The board of county

commissioners, after a county-owned civic center, youth center, recreation center, or any combination of two or more thereof has been established, may annually levy on the taxable property of the county, in the same manner and at the same time as other county taxes are levied, a special tax not to exceed two (2) mills on each dollar of the taxable valuation for any one (1) year, for the purpose of maintaining, operating, and equipping such county-owned civic center, youth center, recreation center, or any combination of two or more thereof. All laws applicable to the collection of county taxes shall apply to the collection of the tax herein provided. All funds derived from such tax together with all revenue and income from such civic center, youth center, recreation center, or any combination of two or more thereof shall constitute a separate fund, called the civic-youth-recreation center fund, shall be deposited with the county treasurer, and shall not be used for any purposes except those of such civic center, youth center, recreation center, or any combination of two or more thereof. All claims against such separate fund shall be presented and acted upon in the same manner as are all other claims against the county.

**History:** En. Sec. 1, Ch. 45, L. 1955; amd. Sec. 1, Ch. 26, L. 1973.

mum tax levy from one to two mills; and added "equipping" after "maintaining and operating" as a purpose for which the tax levy may be used.

#### **Amendments**

The 1973 amendment increased the maxi-

**16-1182. Board of county commissioners may establish curfew for minors—administrative rules and regulations.** The boards of county commissioners of the respective counties shall have power, by general order, from time to time, to establish a curfew hour, after which minors will not be allowed abroad on the public streets within the confines of unincorporated cities and towns of any such county; and shall have authority to make all proper and necessary administrative rules and regulations for the purpose of carrying into effect the provisions of this act.

**History:** En. Sec. 1, Ch. 29, L. 1969.

#### **Title of Act**

#### **Compiler's Notes**

Chapter 29, Laws 1969 provided: "It is the intent of the legislative assembly that this act be codified as one of the special powers enumerated in chapter 11 of Title [16] 15, Revised Codes of Montana, 1947."

The bracketed reference to Title 16 was substituted by the compiler for an erroneous reference to Title 15.

An act providing for the establishment of a curfew hour for minors in unincorporated cities and towns by general order of the board of county commissioners of the respective counties of Montana, providing a penalty and for enforcement repealing all acts and parts of acts in conflict herewith.

**16-1183. Law enforcement officials to enforce act.** The enforcement of the provisions of this act is enjoined upon every officer and official whose duty it is to enforce the laws of the state.

**History:** En. Sec. 2, Ch. 29, L. 1969.

**16-1184. Penalty—misdemeanor.** Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine in any sum not exceeding ten dollars (\$10.00).

**History:** En. Sec. 3, Ch. 29, L. 1969. all acts and parts of acts in conflict therewith.

**Repealing Clause**

Section 4 of Ch. 29, Laws 1969 repealed

**16-1185. Power of county to spend federal and state funds.** The board of county commissioners of any county in the state of Montana shall have the power and authority to appropriate moneys received from the federal or state government, regardless of the time the moneys are received, by formal resolution. The resolution shall state the source of the moneys, the expenditure program for the funds, and the effective date of the appropriation. The expenditure of said funds shall be according to federal requirements specified in the federal act, or state requirements specified in the state legislation. The moneys appropriated under this section may include federal revenue sharing funds granted to Montana conservation districts organized under Title 76, chapter 1, R. C. M. 1947.

**History:** En. 16-1185 by Sec. 1, Ch. 70, L. 1974; amd. Sec. 1, Ch. 75, L. 1975. federal and state funds by resolution of the board of county commissioners.

**Title of Act**

**Amendments**

An act to authorize the expenditure of

The 1975 amendment added the fourth sentence.

**16-1186. Capital improvement fund authorized.** The governing body of any county in Montana may establish a capital improvement fund for the replacement and acquisition of property, plant or equipment costing in excess of five thousand dollars (\$5,000) with a life expectancy of five (5) years or more, provided a capital improvement program has been formally adopted by said governing body.

**History:** En. 16-1186 by Sec. 1, Ch. 54, L. 1975.

**Title of Act**

An act to allow the creation of a capital improvement fund for county government.

**16-1187. Levies for fund.** Moneys for the capital improvement fund are to be derived from the multiple levies authorized by statute and appropriated to the capital improvement fund, however, no more than ten per cent (10%) of the money derived from any one levy may be appropriated to the capital improvement fund.

**History:** En. 16-1187 by Sec. 2, Ch. 54, L. 1975.

**16-1188. Limitations on fund expenditure.** The capital improvement fund shall not exceed at any time a competent engineering estimate of the cost of the adopted capital improvement program and provided that the funds are expended at least within each ten (10) year period.

**History:** En. 16-1188 by Sec. 3, Ch. 54, L. 1975.

**16-1189. Investment of fund.** The moneys held in the capital improvement fund may be invested as provided by law, however all interest earned on the fund must be credited to the capital improvement fund.

**History:** En. 16-1189 by Sec. 4, Ch. 54, L. 1975.



## CHAPTER 12—BOARD OF COUNTY PRINTING

## Section

16-1226. Purpose.

16-1226.1. Definition.

16-1228. Compensation.

16-1229. Powers and duties of board.

16-1230. County commissioners to contract for county printing.

16-1231. Contractor's bond—subletting.

16-1232. Competitive bids required.

16-1233. County fairs and expositions exempt.

**16-1225. Repealed.**

**Repeal** as the County Printing Commission Act,

Section 16-1225 (Sec. 1, Ch. 280, L. 1967), relating to citation of chapter 12, was repealed by Sec. 107, Ch. 348, Laws of 1974.

**16-1226. Purpose.** The purpose of this chapter is to require the board of county printing to set maximum prices which may be charged for county printing and legal advertising.

**History:** En. Sec. 2, Ch. 280, L. 1967; amd. Sec. 57, Ch. 348, L. 1974. commission"; and made minor changes in phraseology.

**Amendments**

The 1974 amendment substituted "board of county printing" for "county printing

**Cross-References**

Printing defined, sec. 19-103.1.

**16-1226.1. Definition.** Unless the context requires otherwise, in this chapter "board" means the board of county printing provided for in section 82A-904.

**History:** En. 16-1226.1 by Sec. 58, Ch. 348, L. 1974.

**16-1227. Repealed.****Repeal**

Section 16-1227 (Sec. 3, Ch. 280, L. 1967), relating to establishment of county printing commission, was repealed by Sec. 107, Ch. 348, Laws of 1974.

**16-1228. Compensation.** The members of the board shall be compensated and reimbursed as are members of advisory councils in section 82A-110.

**History:** En. Sec. 4, Ch. 280, L. 1967; amd. Sec. 59, Ch. 348, L. 1974.

**Amendments**

The 1974 amendment completely rewrote this section. For prior version, see parent volume.

**16-1229. Powers and duties of board.** The board shall:

(1) Meet annually;

(2) Adopt and publish a schedule of maximum prices to be charged for county printing and legal advertising. The prices shall be the full prices to be charged and shall include the paper stock specified, completion of all printing and other work, and delivery to the county courthouse;

(3) Adopt necessary standards for sizes, weights, and grades of paper stock, which shall conform to the uniform scale of sizes, weights, and

grades used by paper manufacturers, and for sizes and types of printing, ruling and binding, which shall conform as nearly as possible to the ordinary standards in use in the printing industry. For this purpose, reference may be made to established standards or publications used in this state, and the board may provide for the adoption of a standard list for those items not covered by the prices, regulations, or standards published by the board;

(4) Conduct hearings when required to determine maximum rates for county printing. Notice of intention to hold a hearing shall be published at least thirty (30) days before the date set for the hearing in a newspaper published in Helena, and a copy mailed to each board of county commissioners;

(5) Deliver free of charge to each board of county commissioners in this state a copy of every schedule of maximum prices adopted by the board within thirty (30) days of its publication, together with a notice of the date fixed by the board when the prices will be effective.

History: En. Sec. 5, Ch. 280, L. 1967;  
amd. Sec. 60, Ch. 348, L. 1974.

#### Amendments

The 1974 amendment substituted references to the board for references to the county printing commission throughout

the section; substituted present subdivision (1) for one reading "Establish rules and regulations for the government and conduct of the commission and duties for its meetings"; and made minor changes in punctuation and phraseology.

**16-1230. County commissioners to contract for county printing.** (1) The county commissioners shall contract with one (1) newspaper to do all the printing for the county, including advertising required by law and all printed forms required by the county, at a rate not exceeding that set by the board.

(2) The newspaper shall be:

(a) Of general circulation;

(b) Published at least once a week;

(c) Published in the county;

(d) Published continuously in the county for the twelve (12) months preceding the awarding of the contract.

(3) Nothing in this act shall limit or restrict the power of a board of county commissioners to call for competitive bids from persons or firms qualified to bid on county printing under the terms of this act, or to let contracts at prices less than the maximum fixed by the board of county printing.

(4) In any county in which no newspaper owns or operates a commercial printing establishment, the county commissioners shall separate the printing contract into two (2) parts, one of which shall provide for the publication of legal advertising only, such contract being let to a legally qualified newspaper; and the other contract shall provide for all printed forms, materials and supplies required by the county, which contract shall be let to a commercial printing establishment which shall have been in business in the county for at least one (1) year; provided, however, that in no case shall any contract call for payment by the county

of any prices in excess of the maximum fixed by the board of county printing.

**History:** En. Sec. 6, Ch. 280, L. 1967; amd. Sec. 1, Ch. 418, L. 1973; amd. Sec. 61, Ch. 348, L. 1974.

#### **Amendments**

The 1973 amendment substituted "board of county printing" for "county printing

commission" at the end of a former first paragraph (now subsections (1) and (2)); and added subsections (3) and (4).

The 1974 amendment made numerous changes in style, punctuation and phraseology.

**16-1231. Contractor's bond—subletting.** The contract shall be let to the printing establishment that in the judgment of the county commissioners shall be most suitable for performing said work, provided, that the county commissioners shall require of any contractor to do such county printing, a good and sufficient deposit in such sum as said commissioners may deem advisable, signed by at least two (2) sufficient sureties, conditioned to the effect that said contractor will faithfully perform all of the conditions of said contract in accordance with this act and the terms of such contract; provided that nothing in this act shall be construed so as to compel the acceptance of unsatisfactory work; also provided, however, that this requirement shall not affect any contract made prior to the passage of this act. Such contract for printing shall extend for a period of not more than two (2) years. All printing establishments which may receive any contract for printing under this act and which may not be able to execute any part of such contract shall be required to sublet such contract or portion of contract to some printing establishment within the county if such is available, and if not within the state, which shall do the work under the contract so sublet entirely within the state with Montana labor.

**History:** En. Sec. 7, Ch. 280, L. 1967; amd. Sec. 2, Ch. 418, L. 1973.

#### **Amendments**

The 1973 amendments substituted "printing establishment" for "newspapers" near

the beginning of the first and third sentences; and substituted "some printing establishment within the county if such is available, and if not within the state" in the third sentence for "some newspaper or printing establishment within the state."

**16-1232. Competitive bids required.** The board of county commissioners shall call for competitive bids from persons or firms qualified to bid on county printing under the terms of this act.

**History:** En. Sec. 8, Ch. 280, L. 1967; amd. Sec. 3, Ch. 418, L. 1973.

#### **Amendments**

The 1973 amendment substituted "The board of county commissioners shall call"

at the beginning of the section for "Nothing in this act shall limit or restrict the power of a board of county commissioners to call"; and deleted "or to let contracts at prices less than the maximum fixed by the county printing commission" from the end of the section.

**16-1233. County fairs and expositions exempt.** None of the provisions of this chapter applies to any printing or advertising that may be required in connection with the holding of county fairs and expositions.

**History:** En. Sec. 9, Ch. 280, L. 1967; amd. Sec. 62, Ch. 348, L. 1974.

#### **Amendments**

The 1974 amendment substituted "chapter" for "act"; and made a minor change in phraseology.



## CHAPTER 14—COUNTY FAIRS

## Section

16-1406. Appropriation and tax levy for county fairs.

16-1407.1. Capital improvement fund authorized.

16-1407.2. Funding of capital improvements—restriction—interest paid to county.

16-1412. Budget for district fairs—consideration by county commissioners—tax levy—district fair fund—expenditures.

**16-1406. (4549) Appropriation and tax levy for county fairs.** The board of county commissioners of their respective counties may appropriate annually out of the general fund of the county treasury to the county fair commission a sum not to exceed three thousand five hundred dollars (\$3,500), to be expended by the county fair commission for the purpose of holding a county fair and/or junior fair, for advertising the products and resources of their county. In addition to the appropriation above provided for, or in lieu thereof, the county commissioners of any county in Montana shall have the power to levy an ad valorem tax of one and one-half ( $1\frac{1}{2}$ ) mills or less on each dollar of taxable property in such county, for the purpose of securing, equipping, maintaining and operating a county fair and/or a junior fair, including the purchase of land for such purposes, and the erection of such buildings and other appurtenances as may be necessary; provided, however, that no portion of said appropriation or tax levy shall be expended for horse racing.

**History:** En. Sec. 2, Ch. 67, L. 1903; re-en. Sec. 2928, Rev. C. 1907; amd. Sec. 5, Ch. 131, L. 1917; re-en. Sec. 4549, R.C.M. 1921; amd. Sec. 1, Ch. 32, L. 1927; amd. Sec. 1, Ch. 176, L. 1947; amd. Sec. 1, Ch. 134, L. 1955; amd. Sec. 1, Ch. 154, L. 1971.

**Amendments**

The 1971 amendment increased the maximum annual appropriations specified in the first sentence from \$2,500 to \$3,500.

**16-1407.1. Capital improvement fund authorized.** The fair commission of any county in Montana is authorized to establish, by a vote of the majority of the commission, a capital improvement fund for the replacement and acquisition of property, buildings, or equipment costing more than five thousand dollars (\$5,000) and which has a useful life of five (5) years or more.

**History:** En. 16-1407.1 by Sec. 2, Ch. 19, L. 1975.

1947, and to allow county fair commissions to create capital improvement funds and providing for their regulation.

**Title of Act**

An act to amend section 16-807, R. C. M.

**16-1407.2. Funding of capital improvements—restriction—interest paid to county.** (1) Money for the capital improvement fund shall be derived from the unexpended money obtained by the fair commission under section 16-1406.

(2) The capital improvement fund may not exceed at any time a competent estimate of the cost of the adopted capital improvement program.

(3) All interest earned on the money in the capital improvement fund shall be paid into the county general fund.

**History:** En. 16-1407.2 by Sec. 3, Ch. 19, L. 1975.

**16-1412. (4550.5) Budget for district fairs—consideration by county commissioners—tax levy—district fair fund—expenditures.** (1) To raise the revenue necessary to hold district fairs, the board of directors shall meet during the first week of May of each year and make a budget of the amounts required in the conduct of the affairs of the district for the following year. The board shall deduct from the budget the probable income from the annual district fair and other exhibitions to be held by the district during the following year and shall then apportion the remaining balance among the various counties forming the district in proportion to the assessed property of each county as determined by the assessment rolls of the preceding year. By mutual agreement of the directors, the share apportioned to the county in which the fair is being conducted may be made larger than in other counties comprising the district. The secretary shall certify to each board of county commissioners the amount of the budget and the amount of revenue to be raised by the county for these purposes and shall file a certified copy thereof with the clerk of the board of county commissioners of each of the counties in the district on or before June 1 of each year. The respective boards of county commissioners of the counties comprising the district shall meet in joint assembly with their county fair commissioners during the first week of June of each year and jointly consider the budget proposed by the board of directors of the district and give such approval or suggest such amendments or modifications as they think proper and desirable.

(2) If the county commissioners fail to hold the joint meeting or fail to take any action, then the budget certified by the secretary of the fair district shall be without further action approved and the sums of money apportioned to the county shall be the sums to be raised by special levy for this purpose. For the purpose of raising the revenues, the board of county commissioners of each county in the district shall annually make a levy to raise the required sum apportioned to the respective counties. However, the levy shall not exceed 1 mill on the dollar of the taxable value of all the taxable property in the county, except in the case of the county in which the fair is being conducted. In this county, the levy shall not exceed 1½ mills on the dollar of taxable property in the county. In addition to this levy, any and all moneys available for the holding of county fairs may be allotted and transferred to the use of the district fair as the respective county fair commissioners may elect. The funds available to a district fair shall, on the first Monday in August or as soon thereafter as may be possible, be deposited with the county treasurer of the county in which the district fair is to be held and credited to a fund to be known as the district fair fund, held and paid out in the same manner as the county fair fund, except that it shall be paid out on district fair board warrants signed by the chairman or the vice-chairman and the secretary of the district fair board. The treasurer of the county in which the district fair will be held shall carry the moneys received from the various counties in the district in the regular county fair fund in the same manner as regular county fair moneys, payable, however, only on district fair warrants.

**History:** En. Sec. 5, Ch. 178, L. 1931; **Amendments:** 1931, 1932, 1933, 1934, 1935, 1936, 1937, 1938, 1939, 1940, 1941, 1942, 1943, 1944, 1945, 1946, 1947, 1948, 1949, 1950, 1951, 1952, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961, 1962, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 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2754, 2755, 2756, 2757, 2758, 2759, 2760, 2761, 2762, 2763, 2764, 2765, 2766, 2767, 2768, 2769, 2770, 2771, 2772, 2773, 2774, 2775, 2776, 2777, 2778, 2779, 2780, 2781, 2782, 2783, 2784, 2785, 2786, 2787, 2788, 2789, 2790, 2791, 2792, 2793, 2794, 2795, 2796, 2797, 2798, 2799, 2800, 2801, 2802, 2803, 2804, 2805, 2806, 2807, 2808, 2809, 2810, 2811, 2812, 2813, 2814, 2815, 2816, 2817, 2818, 2819, 2820, 2821, 2822, 2823, 2824, 2825, 2826, 2827, 2828, 2829, 2830, 2831, 2832, 2833, 2834, 2835, 2836, 2837, 2838, 2839, 2840, 2841, 2842, 2843, 2844, 2845, 2846, 2847, 2848, 2849, 2850, 2851, 2852, 2853, 2854, 2855, 2856, 2857, 2858, 2859, 2860, 2861, 2862, 2863, 2864, 2865, 2866, 2867, 2868, 2869, 2870, 2871, 2872, 2873, 2874, 2875, 2876, 2877, 2878, 2879, 2880, 2881, 2882, 2883, 2884, 2885, 2886, 2887, 2888, 2889, 2890, 2891, 2892, 2893, 2894, 2895, 2896, 2897, 2898, 2899, 2900, 2901, 2902, 2903, 2904, 2905, 2906, 2907, 2908, 2909, 2910, 2911, 2912, 2913, 2914, 2915, 2916, 2917, 2918, 2919, 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from the revenue derived from annual fairs or other exhibitions conducted" at the beginning of subsection (1); substituted "taxable value" in the third sen-

tence of subsection (2) for "assessed valuation"; and made minor changes in phraseology, punctuation and style.

## CHAPTER 15—COUNTY LAND ADVISORY BOARD

### Section

- 16-1512. Dispositions of property prior to 1969 validated.  
 16-1513. Dispositions of property prior to 1971 validated.  
 16-1514. Dispositions of property prior to 1973 validated.

**16-1512. Dispositions of property prior to 1969 validated.** All sales or dispositions heretofore made or attempted to be made by any county of any property in which such county had or claimed any right, title or interest are hereby validated and confirmed, and all instruments of transfer or conveyance heretofore made or executed by any county are hereby validated and confirmed, and all such sales, dispositions and instruments are hereby declared to have vested in the grantee or purchaser, as of the date thereof, all right, title, estate and interest of such county in and to the property described or covered.

**History:** En. Sec. 1, Ch. 78, L. 1969.

### Title of Act

An act to validate and confirm sales or dispositions heretofore made or attempted to be made by any county of any property in which such county had or claimed any right, title or interest, and

all instruments of transfer or conveyance heretofore made or executed by any county, and to declare that all such sales, dispositions and instruments have vested in the grantee or purchaser, as of the date thereof, all right, title and interest of the county in and to the property described or covered.

**16-1513. Dispositions of property prior to 1971 validated.** All sales or dispositions heretofore made or attempted to be made by any county of any property in which such county had or claimed any right, title or interest are hereby validated and confirmed, and all instruments of transfer or conveyance heretofore made or executed by any county are hereby validated and confirmed, and all such sales, dispositions and instruments are hereby declared to have vested in the grantee or purchaser, as of the date thereof, all right, title, estate and interest of such county in and to the property described or covered.

**History:** En. Sec. 1, Ch. 96, L. 1971.

### Title of Act

An act to validate and confirm sales or dispositions heretofore made or attempted to be made by any county of any property in which such county had or claimed any right, title or interest, and all instru-

ments of transfer or conveyance heretofore made or executed by any county, and to declare that all such sales, dispositions and instruments have vested in the grantee or purchaser, as of the date thereof, all right title and interest of the county in and to the property described or covered.

**16-1514. Dispositions of property prior to 1973 validated.** All sales or dispositions heretofore made or attempted to be made by any county of any property in which such county had or claimed any right, title or interest are hereby validated and confirmed, and all instruments of transfer or conveyance heretofore made or executed by any county are hereby validated and confirmed, and all such sales, dispositions and instruments are hereby declared to have vested in the grantee or purchaser, as of the



date thereof, all right, title, estate and interest of such county in and to the property described or covered.

**History:** En. Sec. 1, Ch. 148, L. 1973.

#### **Title of Act**

An act to validate and confirm sales or dispositions heretofore made or attempted to be made by any county of any property in which such county had or claimed any right, title or interest, and all in-

struments of transfer or conveyance heretofore made or executed by any county, and to declare that all such sales, dispositions and instruments have vested in the grantee or purchaser, as of the date thereof, all right, title and interest of the county in and to the property described or covered.

### **CHAPTER 16—RURAL IMPROVEMENT DISTRICTS**

#### **Section**

16-1601. Rural improvement districts—creation and objects.

16-1602. Resolution of intention—publication, mailing and notice.

16-1607. Notice inviting proposals—publication and posting—opening bids—readvertisement—contract for purchase.

16-1609. Bond of contractor or contracting owners.

16-1620. Form and terms of district warrants and bonds—payment of contracts.

**16-1601. (4574) Rural improvement districts—creation and objects.** Whenever the public interest or convenience may require, and upon the petition of sixty per centum (60%) of the freeholders affected thereby, the board of county commissioners is hereby authorized and empowered to order and create special improvement districts in thickly populated localities outside of the limits of incorporated towns and cities for the purpose of building, constructing, or acquiring by purchase devices intended to protect the safety of the public from open ditches carrying irrigation or other water, and maintaining sanitary and storm sewers, light systems, waterworks plants, water systems, sidewalks and such other special improvements as may be petitioned for.

The owner or owners of open ditches carrying irrigation or other water, shall not be included in any rural improvement districts under this act for the purpose of assessment to support the rural improvement districts for the installation, repair, or maintenance of any protective devices. Such devices or improvements shall provide access to, and shall not be constructed so as to hinder the operation and maintenance of the ditch.

**History:** En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 1, Ch. 147, L. 1921; re-en. Sec. 4574, R. C. M. 1921; amd. Sec. 1, Ch. 133, L. 1929; amd. Sec. 1, Ch. 30, L. 1961; amd. Sec. 1, Ch. 134, L. 1961; amd. Sec. 1, Ch. 304, L. 1969.

amendments of section 16-1601 by 1961 acts. Therefore, this section takes the place of both sections 16-1601(1) and 16-1601(2) as set forth in the parent volume.

#### **Amendments**

The 1969 amendment reconciled the two 1961 amendments and added the second paragraph.

#### **Compiler's Notes**

The 1969 amendment reconciled the two

**16-1602. (4575) Resolution of intention—publication, mailing and notice.** Before creating any special improvement district for the purpose of making any of the improvements, acquiring any private property for any purpose authorized by this act, the board of county commissioners shall pass a resolution of intention so to do, which resolution shall designate the number of such district, describe the boundaries thereof, and state therein the general character of the improvements which are to be made, desig-

nate the name of the engineer who is to have charge of the work, and an approximate estimate of the cost thereof. Upon having passed such a resolution the board of county commissioners must give notice of the passage of such resolution of intention, which notice must be published for ten consecutive days in a daily newspaper or in two issues of a weekly newspaper published nearest to the place where such improvement district is to be created, and shall also cause to be posted within the boundaries of such special improvement district, a copy of such notice in three public places, and a copy of such notice shall be mailed to every person, firm or corporation, or the agent of such person, firm or corporation owning real property within the proposed district, listed in his name upon the last completed assessment roll for state, county and school district taxes, at his last known place of residence upon the same day such notice is first published or posted.

Such notice must describe the general character of the improvement, or improvements, so proposed to be made, or acquired by purchase, state the estimated cost thereof, and designate the time when, and the place where, the board of county commissioners will hear and pass upon all protests that may be made against the making or maintenance of such improvements, or the creation of such district, and the said notice shall refer to the resolution on file in the office of the county clerk for the description of the boundaries. If the proposal is for the purchase of an existing improvement, the notice shall state the exact purchase price of such existing improvement.

**History:** En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 2, Ch. 147, L. 1921; re-en. Sec. 4575, R. C. M. 1921; amd. Sec. 2, Ch. 134, L. 1961; amd. Sec. 1, Ch. 252, L. 1969.

tion owning" and "listed in his name \* \* \* school district taxes" after "proposed district" in the second sentence of the first paragraph.

#### Effective Date

Section 2 of Ch. 252, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 6, 1969.

#### Amendments

The 1969 amendment inserted "real" before "property" after "firm or corpora-

**16-1607. (4580) Notice inviting proposals—publication and posting—opening bids—readvertisement—contract for purchase. (1) and (2) \* \* \***  
[Same as parent volume.]

(3) The time fixed for the opening of the bids shall not be less than fifteen days from the time of the final publication of said notice. All proposals or bids offered shall be accompanied by bid security as provided for in Title 6, chapter 5, R. C. M. 1947. Such proposals or bids shall be delivered to the county clerk, and the board of county commissioners shall, in open session, publicly open and examine and declare the same.

(4) \* \* \* [Same as parent volume.]

(5) If the bids are rejected or no bids are received the board of county commissioners may within six months thereafter readvertise for proposals or bids for the performance of the work as in the first instance, without further proceedings, and thereafter proceed in the manner in this section provided, and shall thereupon return to the proper parties the bid securities accompanying the bids so rejected, but the bid security accompanying said accepted proposal or bid shall be held by the county clerk until the contract for doing said work as hereinafter provided has been entered into, either



by the said lowest bidder, or by the owners of over fifty per cent of frontage, whereupon said bid security shall be returned to said bidder, but if said bidder fails, neglects or refuses to enter into the contract to perform said work and improvements as hereinafter provided, then the bid security accompanying his bid, in the amount therein mentioned, shall be declared to be forfeited to the said board of county commissioners, and shall be collected by it, and paid into the general fund of the county.

(6) \* \* \* [Same as parent volume.]

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 7, Ch. 147, L. 1921; re-en. Sec. 4580, R. C. M. 1921; amd. Sec. 3, Ch. 134, L. 1961; amd. Sec. 3, Ch. 220, L. 1975.

Amendments

The 1975 amendment substituted "bid security as provided for in Title 6, chapter 5, R. C. M. 1947" for "a check payable to the board of county commissioners, cer-

tified by a responsible bank, for an amount which shall not be less than ten per cent of the aggregate of said proposal" at the end of the second sentence in subsection (3); deleted "provided, however, that no proposal or bid shall be considered unless accompanied by said check" from the end of subsection (3); substituted references to the bid security for references to checks and certified checks throughout subsection (5); and made a minor change in phraseology.

**16-1609. (4582) Bond of contractor or contracting owners.** All contractors and contracting owners included shall at the time of executing any contract for any work, execute a bond to the satisfaction and approval of the board of county commissioners, in the form and manner provided for in Title 6, chapter 4, R. C. M. 1947.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 9, Ch. 147, L. 1921; re-en. Sec. 4582, R. C. M. 1921; amd. Sec. 4, Ch. 220, L. 1975.

Amendments

The 1975 amendment substituted "in the form and manner provided for in Title 6, chapter 4, R. C. M. 1947" at the end of the section for specific bond provisions. For prior version, see parent volume.

**16-1620. (4593) Form and terms of district warrants and bonds—payment of contracts.** (1) All costs and expenses incurred in the construction or maintenance of any improvement specified in this act, in any improvement district shall be paid for by special improvement district bonds, or warrants. Such bonds or warrants shall be drawn in substantially the following form:

District No. \_\_\_\_\_  
United States of America  
State of Montana  
Dollars \_\_\_\_\_  
\$ \_\_\_\_\_

Warrant or  
(Bond No. \_\_\_\_\_)  
Interest at the rate of \_\_\_\_\_ percent per annum, payable annually.

Special Improvement District Coupon

Warrant or Bonds \_\_\_\_\_, Montana.  
Issued by the County of \_\_\_\_\_, Montana.  
The county treasurer of \_\_\_\_\_ County, Montana, will pay to \_\_\_\_\_, or bearer, the sum of \_\_\_\_\_ dollars, as authorized by Resolution No. \_\_\_\_\_, as passed on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, creat-



ing or maintaining the Special Improvement District No. —, for the construction (or maintenance) of the improvements and work performed as authorized in said resolution to be done in said district, and all laws, resolutions and ordinances relating thereto, in payment of the contract in accordance therewith. The principal and interest of this warrant (or bond) are payable at the office of the county treasurer of \_\_\_\_\_ County, Montana.

This warrant (or bond) bears interest at the rate of — per cent per annum from the date of the registration of this warrant (or bond), as expressed herein, until the date called for the redemption by the county treasurer. The interest on this warrant (or bond) is payable annually on the first day of \_\_\_\_\_ each year, unless paid previous thereto and as expressed by the interest coupons hereto attached, which bear the signatures of the chairman of the board of county commissioners and the county clerk.

This warrant (or bond) is payable from the collection of a special tax or assessment which is a lien against the real estate within said improvement districts, as described in said resolution hereinbefore referred to.

This warrant (or bond) is redeemable at the option of the county at any time there are funds to the credit of said special improvement district fund (construction and maintenance) for the redemption thereof, and in the manner provided for the redemption of the same.

It is hereby certified and recited, that all things required to be done precedent to the issuance of this warrant (or bond) have been properly done, happened and been performed in the manner prescribed by the laws of the state of Montana and the resolution and ordinances of the county of \_\_\_\_\_, Montana, relating to the issuance thereof.

Dated at \_\_\_\_\_, Montana, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, County of \_\_\_\_\_, Montana.

(SEAL)

By \_\_\_\_\_, chairman of the board of county commissioners.

(SEAL)

\_\_\_\_\_ County Clerk

Registered at the office of the county treasurer of \_\_\_\_\_, County, Montana this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_ County Treasurer

(2) And the same shall be drawn against the special improvement district fund created for the district, that is, either the construction or maintenance fund as the case may be, and shall bear interest from the date of registration until called for redemption or paid in full, interest to be payable annually on the first day of January of each year, unless the board of county commissioners prescribe another date. Such warrants (or bonds) shall bear the signatures of the chairman of the board of county commissioners and the county clerk, and shall bear the corporate seal of the county. They shall be registered in the office of the county clerk and the county treasurer, and, if interest coupons be attached thereto, they shall also be so registered, and shall bear the signatures of the

chairman of the board of county commissioners and the county clerk, provided however, that said coupons may bear the facsimile signatures of said officers in the discretion of the board of county commissioners. Said bonds shall be in denominations of one hundred dollars (\$100) or fractions, or multiples thereof; and may be issued in installments, and may extend over a period of not to exceed thirty (30) years, except that if federal loans are available for improvements, repayment may extend over a period not to exceed forty (40) years.

(3) Such warrants (or bonds) shall be redeemed by the county treasurer when there are funds in the special improvement district fund against which said warrants (or bonds) are issued available therefor; provided that the county treasurer shall first pay out of the proper special improvement district fund, annually, the interest on all outstanding warrants (or bonds) on presentation of the coupons belonging thereto, and any funds remaining in the proper fund shall be applied to the payment of the principal and the redemption of the warrants (or bonds) in order of their registration; provided, further, that whenever there are any funds in any special improvement district fund, after paying the interest on such warrants (or bonds) drawn against said fund, the county treasurer shall call in for payment outstanding warrants (or bonds), which, together with the interest thereon to the date of redemption, will equal the amount of said fund on that date, which date shall be fixed by the county treasurer, who shall give notice by publication once in a newspaper published in the city, or, at the option of the county treasurer, by written notice to the holder or holders of such warrants (or bonds), if their address be known, of the number of warrants (or bonds), and the date on which payment will be made, which date shall not be less than ten (10) days after the date of publication or of service of notice, and on which date so fixed, interest shall cease.

(4) \* \* \* [Same as parent volume.]

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 20, Ch. 147, L. 1921; re-en. Sec. 4593, R.C.M. 1921; amd. Sec. 1, Ch. 3, L. 1955; amd. Sec. 7, Ch. 260, L. 1959; amd. Sec. 2, Ch. 136, L. 1961; amd. Sec. 2, Ch. 40, L. 1965; amd. Sec. 22, Ch. 234, L. 1971.

#### Amendments

The 1971 amendment deleted "not to exceed six per cent per annum" after "shall bear interest" in the first sentence of subsection (2); and made minor changes in phraseology, punctuation and style.

### 16-1631. (4602) Transfer of management and control of district, etc.

Compiler's Notes: This section, was repealed by Ch. 147, Laws 1921.  
Chapter 123, laws of the fourteenth legislative assembly (1915), referred to in

## CHAPTER 17—WEED CONTROL

### Section

- 16-1701. Noxious weeds defined.
- 16-1708. Embargo against introduction of noxious weed seed from other states.
- 16-1708.1. Rules for enforcement of interstate embargo.
- 16-1708.3. Disposition of fines and inspection fees.
- 16-1709.1. Weed control and weed seed extermination districts—formation.
- 16-1713. Appointment of weed control and weed seed extermination supervisors—term of office—compensation.

- 16-1719. County supervisors to control weeds and to exterminate weed seed in the district.  
 16-1724. Technical assistance.  
 16-1725. Funding of noxious plant management programs.  
 16-1726. Reports.  
 16-1727. Rules.

**16-1701. Noxious weeds defined.** The Canadian thistle (*cirsium arvense* (L.) Scop.), wild morning glory or bindweed (*convolvulus arvensis* L.) white top (*lepidium draba* L.), leafy spurge (*euphorbia virgata* Waldst. and Kit.), Russian knapweed (*centaurea pteris pallas.*), and such other weed or weeds as may be defined and designated as a noxious weed by the board of county commissioners of each county, subject to the approval of the county extension agent or agricultural experiment station at Montana state university, is hereby declared to be a noxious weed and a common nuisance. Such noxious weeds are hereinafter referred to as "weeds."

**History:** En. Sec. 1, Ch. 195, L. 1939; to the approval \* \* \* at Montana state  
 amd. Sec. 1, Ch. 360, L. 1974. university" toward the end of the first sentence.

#### Amendments

The 1974 amendment inserted "subject

**16-1708. Embargo against introduction of noxious weed seed from other states.** If the department of agriculture believes that movements of grain, plants, seed, tubers, nursery stock, hay, straw, fruit, or other materials containing noxious weed seed or plants dangerous or inimical to the horticultural or agricultural industries are about to be introduced into the state, it may advise the governor. The governor shall, by proclamation, declare an embargo against the importation or shipment of the grain, plants, tubers, nursery stock, seed, hay, straw, fruit, or other materials into the state, except under restrictions established in this act, and provided in the rules adopted by the department of agriculture.

**History:** En. Sec. 4, Ch. 195, L. 1939; **Amendments**  
 amd. Sec. 1, Ch. 44, L. 1965; amd. Sec. 117, The 1974 amendment substituted "de-  
 Ch. 218, L. 1974. partment" for "commissioner" in two places; and made minor changes in phraseology.

**16-1708.1. Rules for enforcement of interstate embargo.** The department of agriculture shall adopt all necessary rules in the enforcement of an embargo proclaimed as provided in section 16-1708. The department of agriculture, in adopting the rules, may provide for the establishment of inspection stations, the appointment of inspectors, the establishment of the inspection fees, the issuance of certificates, the methods of transporting and packaging, and other rules and procedures necessary to carry out this act.

**History:** En. Sec. 2, Ch. 44, L. 1965; **Amendments**  
 amd. Sec. 118, Ch. 218, L. 1974. The 1974 amendment substituted "de-

**Amendments**

The 1974 amendment substituted "de-

**16-1708.3. Disposition of fines and inspection fees.** All fines levied as provided in section 16-1708.2, and all fees collected from inspections shall



be deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the department of agriculture for the purpose of administering and enforcing this act.

History: En. Sec. 4, Ch. 44, L. 1965;  
amd. Sec. 119, Ch. 218, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "commissioner."

### 16-1709. Repealed.

#### Repeal

Section 16-1709 (Sec. 5, Ch. 195, L. 1939; Sec. 1, Ch. 59, L. 1951), relating to

creation of weed control and weed seed extermination districts, was repealed by Sec. 3, Ch. 185, Laws 1969.

**16-1709.1. Weed control and weed seed extermination districts—formation.** A weed control and weed seed extermination district shall be formed in every county of this state and shall include all the land within the boundaries of the county.

History: En. 16-1709.1 by Sec. 1, Ch. 185, L. 1969; amd. Sec. 2, Ch. 360, L. 1974.

#### Title of Act

An act providing that a weed control district be formed in every county; amending section 16-1713, R. C. M. 1947, by eliminating the language referring to city

and town district; and repealing sections 16-1709, 16-1710, 16-1711, 16-1712 and 16-1723, R. C. M. 1947.

#### Amendments

Section 2 of Ch. 360, Laws 1974 purported to amend this section, but made no change in text.

### 16-1710 to 16-1712. Repealed.

#### Repeal

Sections 16-1710 to 16-1712 (Secs. 6 to 8, Ch. 195, L. 1939; Sec. 1, Ch. 228, L. 1947; Sec. 1, Ch. 60, L. 1951), relating to

the creation of weed control and weed seed extermination districts, were repealed by Sec. 3, Ch. 185, Laws 1969.

**16-1713. Appointment of weed control and weed seed extermination supervisors—term of office—compensation.** The board of county commissioners of each county shall appoint a county weed board consisting of three (3) or five (5) members. If a five (5) member board, three (3) members shall be rural agricultural landowners within the county, one (1) from a city or town within the county, and one (1) teacher of biology, or person with comparable expertise. If a three (3) member board, two (2) members shall be rural agricultural landowners within the county, and one (1) member shall be a teacher of biology, or person with comparable expertise. They shall be appointed for a period of one (1), two (2), and three (3) years respectively for a three (3) member board or should a five (5) member board be selected, they shall be appointed for one (1) and two (2) year terms respectively dating from the preceding July, and thereafter an appointment or reappointment shall be made annually by the board of county commissioners. The county extension agent in each county shall be an ex officio member of that county's weed board. Said supervisors shall be public officers, and they shall organize by choosing a chairman and a secretary. The secretary may or may not be a member of the board. Salary, per diem and mileage of such supervisors shall be set by resolution of the board of county commissioners. The supervisors may employ suitable and competent persons as assistants and employees as may be necessary and provide for their compensation. It shall be the duties of said supervisors to supervise within their county the control program.

**History:** En. Sec. 9, Ch. 195, L. 1939; amd. Sec. 1, Ch. 90, L. 1941; amd. Sec. 2, Ch. 228, L. 1947; amd. Sec. 1, Ch. 51, L. 1961; amd. Sec. 1, Ch. 64, L. 1965; amd. Sec. 2, Ch. 185, L. 1969; amd. Sec. 3, Ch. 360, L. 1974.

#### Amendments

The 1969 amendment revised this section to insert provisions for five-member boards.

The 1974 amendment substituted "one (1) from a city or town within the county, and one (1) teacher of biology, or a person with comparable expertise" at the end of the second sentence for "two (2) from municipalities within the county";

substituted "a teacher of biology, or person with comparable expertise" at the end of the third sentence for "from a municipality within the county"; inserted the fifth sentence; substituted the present eighth sentence concerning salary, per diem and mileage for one reading "All such supervisors shall be entitled to mileage, and per diem of ten dollars (\$10) per day"; and made minor changes in punctuation.

#### Repealing Clause

Section 3 of Ch. 185, Laws 1969 read "Sections 16-1709, 16-1710, 16-1711, 16-1712, and 16-1723, R. C. M. 1947, are repealed."

**16-1719. County supervisors to control weeds and to exterminate weed seed in the district.** The supervisors shall control noxious weeds on all lands within the confines of the district. They shall take particular precautions to control the noxious weeds while preserving beneficial vegetation and wildlife habitat. Where at all possible methods for such control shall include mowing, chemical and biological methods. The total cost of such control shall be paid from the "noxious weed fund." Provided that the cost of controlling such weeds growing along the right of way of a state or federal highway shall upon the presentation by the supervisors of a verified account of the expenses incurred, be paid from the state highway fund. Costs attributed to other lands within the district shall be assessed to and collected from the appropriate holder or owner of interest as set forth in section 16-1706.

**History:** En. Sec. 15, Ch. 195, L. 1939; amd. Sec. 5, Ch. 90, L. 1941; amd. Sec. 6, Ch. 228, L. 1947; amd. Sec. 1, Ch. 68, L. 1973; amd. Sec. 4, Ch. 360, L. 1974.

#### Amendments

The 1973 amendment inserted "and on public streets, alleys and municipally owned land" in the first sentence.

The 1974 amendment substituted "all lands" in the first sentence for "the highways and county-owned land and on public streets, alleys and municipally owned land"; inserted the second and third sentences; added the last sentence; and made a minor change in phraseology.

### 16-1723. Repealed.

#### Repeal

Section 16-1723 (Sec. 1, Ch. 206, L. 1953; Sec. 1, Ch. 47, L. 1965), relating to

the dissolution of weed control and weed seed extermination districts, was repealed by Sec. 3, Ch. 185, Laws 1969.

**16-1724. Technical assistance.** The department [of agriculture] is authorized to provide technical assistance and services to local governments, agricultural producers, and the general public on the management and control of noxious plants. This assistance and service may include:

- (1) development, compilation, and reporting of information and records on noxious plant infestations in every county;
- (2) information and data on the location of noxious plants and acres infested per county and major infestations of watersheds and geographical regions of the state;

(3) a determination of the economic and environmental impact of noxious plants on Montana and its citizens;

(4) providing technical assistance to various governmental units and citizens on managing long-term noxious plant control programs;

(5) delineation and recommendation of areas in the state where management programs or certain management tools should not be utilized because of economic or environmental considerations;

(6) information on the restrictions of and proper use of pesticides and other management techniques;

(7) publishing of model quarantine standards for counties desiring to provide a quarantine program for noxious plants, plant parts, and seed transported in the county; and

(8) cooperation and coordination of activities with any government agency, private industry, or citizens.

**History:** En. 16-1724 by Sec. 1, Ch. 466, L. 1977. culture to provide technical and financial assistance for noxious plant management and to obtain funds to financially assist

**Title of Act** local governments managing noxious plants  
An act enabling the department of agri- on state and federal lands.

**16-1725. Funding of noxious plant management programs.** (1) The department may make every effort to obtain federal funds under 43 U.S.C. 1242 to implement management of noxious plants on federal lands in cooperation with any federal agency and the local government body responsible for noxious plant management. These federal funds shall be directly disbursed to local governments authorized to conduct noxious plant management programs. The department may require individual or multiple local government units wishing to apply for federal funds to make proper application for the funds following the management program, budget guidelines and policies of the department, and the requirements of 43 U.S.C. 1241 through 1243. The department shall request 3% of the total federal funds received per year to cover the complete cost of administering, monitoring, and auditing the expenditure of these federal funds.

(2) The department may cooperate in and coordinate the planning and disbursement of these funds with federal, state, and local agencies responsible for management of noxious plants.

(3) The department may directly expend or provide federal or state funds to local governments to manage or eradicate new noxious plant infestations invading federal or state lands within the state.

(4) The department may hold a public hearing in the specific locale requesting funding prior to granting the federal funds. The department may determine if there are any special requirements or restrictions that should be incorporated into the management program prior to its implementation.

**History:** En. 16-1725 by Sec. 2, Ch. 466, L. 1977.

**16-1726. Reports.** The department may prepare a biennial report on the status of noxious plants and their management in Montana. Reports



may be submitted to the governor and legislature and other such groups and organizations as the department considers necessary.

History: En. 16-1726 by Sec. 3, Ch. 466, L. 1977.

**16-1727. Rules.** The department may adopt rules and policies necessary to implement this act pursuant to the Montana Administrative Procedure Act.

History: En. 16-1727 by Sec. 4, Ch. 466, L. 1977.

#### Separability Clause

Section 5 of Ch. 466, Laws 1977 read "If a part of this act is invalid, all valid

parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

## CHAPTER 18—CLAIMS AGAINST COUNTIES, COUNTY WARRANTS

### Section

16-1802. Claims to be itemized—time for presenting.

16-1803. Procedure when request for bids is necessary in making contracts for purchases and for construction of buildings, roads and bridges exceeding ten thousand dollars (\$10,000).

16-1803.1. Division of contracts to circumvent bidding procedures prohibited.

**16-1802. (4605) Claims to be itemized—time for presenting.** No account must be allowed by the board unless the same is made out in separate items, the nature of each item stated; if it is for official services for which no specified fees are fixed by law, the time actually and necessarily devoted to such service must be stated. Claims against the county shall contain the following statement: "I certify that this claim is correct and just in all respects and that payment or credit has not been received." Claims need not be verified by affidavit. Every claim against the county, except claims arising from injury to a person or property, which are limited under provisions of Title 82, chapter 43, as amended, must be presented within a year after the last item accrued.

History: Ap. p. Sec. 23, p. 503, Bannack Stat.; re-en. Sec. 23, p. 437, Cod. Stat. 1871; amd. Sec. 1, p. 63, L. 1874; re-en. Sec. 357, 5th Div. Rev. Stat. 1879; re-en. Sec. 762, 5th Div. Comp. Stat. 1887; amd. Sec. 4236, Pol. C. 1895; re-en. Sec. 2945, Rev. C. 1907; re-en. Sec. 4605, R. C. M. 1921; amd. Sec. 1, Ch. 56, L. 1957; amd. Sec. 2, Ch. 234, L. 1977. Cal. Pol. C. Sec. 4072.

### Amendments

The 1977 amendment inserted "except claims arising from injury to a person or property, which are limited under provisions of Title 82, chapter 43, as amended" in the last sentence; and made a minor change in punctuation.

**16-1803. (4605.1) Procedure when request for bids is necessary in making contracts for purchases and for construction of buildings, roads and bridges exceeding ten thousand dollars (\$10,000).** (1) No contract shall be entered into by a county governing body for the purchase of any vehicle, or road machinery, or for any other machinery, apparatus, appliances or equipment, or for any materials or supplies of any kind for which must be paid a sum in excess of ten thousand dollars (\$10,000), or for the construction of any building, road or bridge for which must be paid a sum in excess of ten thousand dollars (\$10,000), without first publishing a notice calling

for bids for furnishing the same, which notice must be published at least once a week, for three (3) consecutive weeks before the date fixed therein for receiving bids, in the official newspaper of the county, and every such contract shall be let to the lowest and best responsible bidder; provided that the provisions of this section shall not apply to contracts for public printing entered into in accordance with the provisions of chapter 12 of Title 16 and provided further, that the provisions of this section shall not apply to contracts for purchases, which in the opinion of the governing body, are made necessary by fires, flood, explosion, storm, earthquake, or other elements, epidemic, riot, insurrection, or for the immediate preservation of order, or of the public health, or for the restoration of a condition of usefulness which has been destroyed by accident, wear, tear, mischief, or for the relief of a stricken community overtaken by calamity.

(2) When the amount to be paid as the purchase price for any vehicle, or road machinery of any kind, or for any other machinery, apparatus, appliance or equipment, or for any materials or supplies of any kind, shall exceed four thousand dollars (\$4,000) the county governing body may provide for the payment of such purchase price in installments extending over a period of not more than five (5) years; provided that, at the time of entering into the agreement for such purchase, there shall be an unexpended balance of appropriation in the budget for the then current fiscal year available and sufficient to meet and take care of such portion of the purchase price as is payable during the then current fiscal year, and the budget for each following year, in which any portion of such purchase price is to be paid, shall contain an appropriation for the purpose of paying the same.

(3) \* \* \* [Same as parent volume.]

(4) On any purchase contract entered into by a county governing body for the purchase of any vehicle, machinery, appliances, apparatus, building or materials and supplies, for which must be paid a sum in excess of four thousand dollars (\$4,000) but less than ten thousand dollars (\$10,000), bids shall be solicited without advertising, from persons, firms or corporations who have caused to be filed with the governing body of the county a request, in writing, that its name be listed with the governing body for solicitations on the particular items set forth in the request, and the governing body of the county shall let such contract to the lowest and best responsible bidder. However, if a person, firm, or corporation whose name is listed fails for a period of one (1) year to respond to any solicitation for bids, such listing may be canceled. The governing body shall solicit bids of prospective suppliers whose names are listed as provided herein, which solicitation shall contain the same information as is required to be set forth in advertisements. In lieu of soliciting bids, the governing body may purchase any vehicle, machinery, appliances, apparatus, building or materials and supplies, for which must be paid a sum less than ten thousand dollars (\$10,000), at public auction. Compliance with the provisions of the section shall be considered as meeting the requirements of section 16-1803 (1).

(5) The state department of administration may serve as a purchasing agent for the county governing body by mutual consent of both parties.

**History:** En. Sec. 1, Ch. 8, L. 1933; amd. Sec. 1, Ch. 87, L. 1935; amd. Sec. 1, Ch. 42, L. 1941; amd. Sec. 1, Ch. 128, L. 1951; amd. Sec. 1, Ch. 25, L. 1963; amd. Sec. 1, Ch. 331, L. 1969; amd. Sec. 1, Ch. 127, L. 1973; amd. Sec. 1, Ch. 55, L. 1975.

#### Amendments

The 1969 amendment increased the amount specified in subsection (1) from \$2,000 to \$4,000 for purchases and from \$2,000 to \$2,500 for building construction.

The 1973 amendment increased the amount specified in subsection (1) for building contracts from \$2,500 to \$4,000.

The 1975 amendment substituted references to the county governing body for references to the board of county commissioners throughout the section; deleted "automobile, truck or other" between "any" and "vehicle" near the beginnings of subsections (1) and (2); increased the

amounts specified in subsection (1) from \$4,000 to \$10,000; inserted "road or bridge" after "building" in subsection (1); increased the amount specified in subsection (2) from \$1,000 to \$4,000; increased the installment period specified in subsection (2) from 3 years to 5 years; deleted a proviso in subsection (2) for payment of at least 40% of the purchase price in the first year of a two-year term and at least a third in each year of a three-year term; and added subsections (4) and (5).

#### Special Purpose Construction

Industrial Development Projects Act (11-4101 to 11-4110) is designed for special purpose and is thereby not limited by provision in this section that county not contract for construction except on public bidding. *Pickens v. Missoula County*, 155 M 258, 470 P 2d 287.

**16-1803.1. Division of contracts to circumvent bidding procedures prohibited.** Whenever any law of this state provides a limitation upon the amount of money that a county can expend upon any public work or construction project without letting such public work or construction project to contract under competitive bidding procedures, a county shall not circumvent such provision by dividing a public work or construction project or quantum of work to be performed thereunder which by its nature or character is integral to such public work or construction project, or serves to accomplish one of the basic purposes or functions thereof, into several contracts, separate work orders or by any similar device.

**History:** En. Sec. 1, Ch. 153, L. 1971.

#### Title of Act

An act to provide that a county shall not circumvent any competitive bidding procedures with respect to the letting of a

contract for a public work or construction project under certain circumstances by dividing a public work or construction project into several contracts, separate work orders or similar devices.

### 16-1808. (4610) Appeals.

#### Mandate as Remedy

Where justice of peace incurred unbudgeted expenses and county commissioners refused to pay, writ of mandate

under section 93-9103, rather than appeal under this section or declaratory judgment, was proper remedy. *State ex rel. Browman v. Wood*, — M —, 543 P 2d 184.

## CHAPTER 19—COUNTY BUDGET SYSTEM

### Section

- 16-1901. County budget—estimates by county officers of revenues and expenditures—form of estimates—penalty for failure to file.
- 16-1902. Tabulation by clerk of expenditure program—classifications—items included in.
- 16-1903. Consideration of budget by commissioners—notice of budget meeting.
- 16-1904. Hearings on budget—adoption—fixing tax levies.
- 16-1909. Department of community affairs to make rules—accounting systems.

**16-1901. (4613.1) County budget—estimates by county officers of revenues and expenditures—form of estimates—penalty for failure to file.**  
(1) Before June 1 each year the county clerk and recorder shall notify



in writing each county official in charge of an office, department, service, or institution of the county to file with the county clerk and recorder, before June 10, detailed and itemized estimates, both of the probable revenues from sources other than taxation, and of all expenditures required by the office, department, service, or institution for the next fiscal year. The county commissioners shall submit to the county clerk and recorder the estimate of expenditures for all purposes for the board, and a detailed statement showing all new road and bridge construction to be financed from county road and bridge funds, from any special road or bridge funds, from any special highway fund, and from bond issues issued or authorized for the next fiscal year, together with the cost of that construction as computed by the county surveyor, or if for construction in charge of a special engineer then by that engineer. The county surveyor and any special engineer shall prepare the estimates of cost of road and bridge construction for the county commissioners. They shall also submit a similar statement showing road and bridge maintenance expenditures as nearly as can be estimated.

(2) The county commissioners shall also submit to the county clerk and recorder detailed estimates of all expenditures for construction or improvement purposes proposed to be made from the proceeds of bond issues not yet authorized and from the proceeds of tax levies which are required to be approved at an election to be held.

(3) The estimates required in this section shall be submitted on forms provided by the county clerk and recorder, and prescribed by the department of community affairs, and may only be varied or departed from with permission and approval of that department. The county treasurer shall prepare the estimates for interest and debt reduction. The county clerk and recorder shall prepare all other estimates which properly fall within the duties of his office.

(4) Each of the officials shall file the estimates within the time and in the manner provided in the form and notice, and the county clerk shall withhold, as a penalty, from the salary of each official failing or refusing to file the estimates ten dollars (\$10) for each day of delay. The total penalty against any official may not exceed fifty dollars (\$50) in one year. In the absence or disability of an official the duties required by this section devolve upon the official or employee in charge of the office, department, service, or institution. The notice shall contain a copy of this penalty clause.

**History:** En. Sec. 1, Ch. 148, L. 1929; amd. Sec. 1, Ch. 48, L. 1947; amd. Sec. 63, Ch. 348, L. 1974; amd. Sec. 22, Ch. 213, L. 1975.

#### **Amendments**

The 1974 amendment substituted references to "department of intergovernmental

relations" in subsection (3) for references to "state examiner"; and made minor changes in style, punctuation and phraseology.

The 1975 amendment substituted "department of community affairs" for "department of intergovernmental relations" in subsection (3).

**16-1902. (4613.2) Tabulation by clerk of expenditure program—classifications—items included in.** (1) From those estimates the county clerk and recorder shall prepare a tabulation showing the complete expenditure program of the county for the current fiscal year, and the sources of

revenue by which it is to be financed. The tabulation shall set forth the estimated receipts from all sources other than taxation for each office, department, service, or institution for the current fiscal year, the actual receipts for the last completed fiscal year, the surplus or unencumbered treasury balances at the close of that last fiscal year, and the amount necessary to be raised by taxation; the estimated expenditure for each office, department, service, or institution for the current fiscal year, the actual expenditures for the last completed fiscal year, and all contracts or other obligations which will affect the current year revenues.

(2) The estimates, appropriations, and expenditures shall be classified as:

- (a) salaries and wages;
- (b) maintenance and operation;
- (c) capital outlay;
- (d) interest and debt redemption;
- (e) miscellaneous; and
- (f) expenditures proposed to be made from bond issues not yet authorized, or from the proceeds of a tax levy or levies which are required to be submitted to and approved at an election to be held later.

(3) Within the general class of salaries and wages each salary shall be set forth separately together with the title or position of the recipient. An unitemized appropriation may be made to cover the expenses of special deputies or assistants in any office where the services of such special deputies or assistants may be required during a part of the fiscal year only. Wages for day labor may be given in totals by designating the general purpose or object for which the expenditure is to be made, but the proposed rate per day for each class or kind of labor shall be set forth. Expenditures under the general class of maintenance and operation shall be classified according to a standard classification to be established by the department of community affairs. Expenditures for capital outlay shall set forth and describe each object of expenditure separately. Under the general class of interest and debt redemption, proposed expenditures for interest and for redemption of principal shall be set forth separately for each series or issue of bonds, and warrant interest and redemption requirements shall be set forth in a similar manner. Under the general class of miscellaneous, expenditures for all purposes, not listed in or which cannot properly be assigned to any of the general classes, shall be set forth and itemized in detail.

(4) The total amount of emergency warrants issued during the preceding fiscal year shall be set forth with the amount issued for each emergency and the amount issued against each fund.

History: En. Sec. 2, Ch. 148, L. 1929; amd. Sec. 64, Ch. 343, L. 1974; amd. Sec. 23, Ch. 213, L. 1975.

#### Amendments

The 1974 amendment substituted "department of intergovernmental relations"

in subsection (3) for "state examiner"; and made minor changes in style, punctuation and phraseology.

The 1975 amendment substituted "department of community affairs" for "department of intergovernmental relations" in subsection (3).

**16-1903. (4613.3) Consideration of budget by commissioners—notice of budget meeting.** The tabulation shall be submitted to the county com-



missioners by the county clerk and recorder on or before the first Monday of July. Upon receipt thereof the board of county commissioners shall immediately consider the budget in detail, and shall on or before the second Monday of July make any revisions, reductions, additions, or changes that they consider advisable. The tabulation, with any revisions, reductions, additions, or changes, is the preliminary budget for the fiscal year which it is intended to cover. Upon completion of the budget, the county clerk shall immediately transmit one copy of it to the department of community affairs and one copy to the department of revenue. The board of county commissioners shall then have a notice published stating that the board has completed its preliminary county budget for the current fiscal year, that the budget is open to inspection in the office of the county clerk and recorder, and that the board will meet on the Wednesday before the second Monday in August to fix the final budget and make appropriations. The notice shall state the time and place of the meeting and that any taxpayer may appear and be heard for or against any part of the budget. The notice shall be published at least one time in a newspaper of general circulation in the county.

**History:** En. Sec. 3, Ch. 148, L. 1929; amd. Sec. 2, Ch. 48, L. 1947; amd. Sec. 65, Ch. 348, L. 1974; amd. Sec. 24, Ch. 213, L. 1975.

#### Amendments

The 1974 amendment substituted "department of intergovernmental relations" in the fourth sentence for "state exam-

iner"; substituted "department of revenue" in the fourth sentence for "state board of equalization"; and made minor changes in punctuation and phraseology.

The 1975 amendment substituted "department of community affairs" for "department of intergovernmental relations" in the fourth sentence.

### 16-1904. (4613.4) Hearings on budget—adoption—fixing tax levies.

(1) On the Wednesday before the second Monday in August the county commissioners shall meet at the time and place designated in the notice provided for in section 16-1903, at which time any taxpayer may appear and be heard for or against any part of the budget. The hearing shall be continued from day to day and shall be concluded and the budget approved and adopted on the second Monday in August and before the fixing of the tax levies by the board.

(2) Upon the conclusion of the hearing the board shall first determine the amount estimated to accrue to each fund during the fiscal year from all sources, except the taxation of property. In so doing the board may not include any amount which it is anticipated may be received during the fiscal year from the payment of taxes which became delinquent during a preceding fiscal year. The board shall then determine separately the amount appropriated for and authorized to be spent for each item in the budget and shall specify the fund or funds against which warrants are to be drawn and issued for each item in the budget and shall specify the fund or funds against which warrants are to be drawn for the expenditures authorized. There may not be added to the amount to be appropriated and authorized to be spent for an item, or to the total amount appropriated and authorized to be spent from any fund, any amount or percentage because of anticipated loss of revenue by reason of the nonpayment of taxes levied for that fiscal year. The total expenditures authorized to be made from



any fund, including the reserve added to them, may not exceed the aggregate of:

- (a) the cash balance in the fund at the close of the preceding fiscal year;
- (b) the amount of estimated revenues to accrue to the funds; and
- (c) the amount which may be raised for the fund by a lawful tax levy during the fiscal year.

(3) The board shall then determine the amount to be raised for each fund by tax levy by adding the cash balance in the fund at the close of the preceding fiscal year and the amount of the estimated revenues to accrue to the fund during the current fiscal year. It shall then deduct the total amount so obtained from the total amount of the appropriations and authorized expenditures from the fund as determined by the board. The amount remaining is the amount necessary to be raised for the fund by tax levy during the current fiscal year. The board may add to the amount necessary to be raised for any fund by tax levy during the current fiscal year, an additional amount as a reserve to meet expenditures to be made from the fund during the months of July to November of the next fiscal year. The amount which may be so added to any fund, as the reserve may not exceed one-third ( $1/3$ ) of the total amount appropriated and authorized to be spent from the fund during the current fiscal year, after deducting from the amount of the appropriations and authorized expenditures the total amount appropriated and authorized to be spent for election expenses and payment of emergency warrants. The total amount to be raised by tax levy for any fund during the current fiscal year, including the amount of the reserve and any amount for payment of election expenses and emergency warrants, may not exceed the total amount which may be raised for the fund by a tax levy which does not exceed the maximum levy permitted by law to be made for the fund.

(4) If the cash balance remaining in any of the several county funds, except the school fund, at the end of a fiscal year, exceeds the amount to be budgeted to that fund, the excess may be transferred to other funds as the county commissioners consider to be in the best interest of the county after a public hearing. Notice of the hearing must be given not less than thirty (30) days prior to the hearing by publication in a newspaper of general circulation in the county and by posting in five (5) public places. The notice must state the date, time, and place of the hearing and state generally the purpose and proposed use of the funds.

(5) The budget as finally determined, in addition to setting out separately each item for which an appropriation or expenditure is authorized and the fund out of which it is to be paid, shall set out the total amount appropriated and authorized to be spent from each fund, the cash balance in the fund at the close of the preceding fiscal year, the amount estimated to accrue to the fund from sources other than taxation, the reserve for the next fiscal year, and the amount necessary to be raised for each fund by tax levy during the current fiscal year. The board shall then by resolution approve and adopt the budget as finally determined and enter the budget at length in the official minutes of the board.

(6) On the second Monday in August, and after the approval and adoption of the final budget, the board of county commissioners shall fix the tax levy for each fund at a rate which will raise the amount set out in the budget as the amount necessary to be raised by tax levy for the fund during the current fiscal year. The taxable valuation of the county for the current fiscal year shall be the basis for determining the amount of the tax levy for each fund. Each tax levy shall be at a rate no higher than is required on that basis, without including any amount for anticipated tax delinquency, to produce the amount set out in the budget without including any amount for anticipated tax delinquency, as being the amount to be raised by tax levy. The tax levy shall be made in the manner provided by section 84-3802.

(7) The county clerk and recorder shall, not later than September 15, forward a full and detailed copy of the final budget, together with the tax levies, to the department of community affairs. If a county clerk and recorder fails to forward a copy of the budget to the department within that time, that department shall, before October 1, notify the board of county commissioners of the county that a copy of the budget has not been forwarded by the county clerk and recorder. The board of county commissioners must then withhold the county clerk and recorder's salary for September until the county clerk and recorder files with the board a receipt from the department showing the receipt of a copy.

**History:** En. Sec. 4, Ch. 148, L. 1929; amd. Sec. 1, Ch. 98, L. 1937; amd. Sec. 1, Ch. 220, L. 1963; amd. Sec. 1, Ch. 178, L. 1969; amd. Sec. 1, Ch. 5, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 261, L. 1974; amd. Sec. 66, Ch. 348, L. 1974; amd. Sec. 25, Ch. 213, L. 1975.

#### Amendments

The 1969 amendment inserted exceptions pertaining to salaries in the provisions (deleted in 1974) in subsection (2) prohibiting appropriations in the budget from exceeding certain percentage restrictions of the amount appropriated in the previous year's budget.

The 1971 amendment added the provision designated as subsection (4).

Chapter 261, Laws of 1974, deleted provisions in subsection (2) prohibiting appropriations in the budget from exceeding certain percentage restrictions of the amount appropriated in the previous year's budget.

Chapter 348, Laws of 1974, designated the former second paragraph of subsection (3) as subsection (4) and redesignated former subsections (5) and (6) as subsections (6) and (7), respectively; substituted references to the "department of intergovernmental relations" and "department" for the "state examiner" in several places in subsection (7); and made numerous minor changes in phraseology, punctuation, and style throughout the section.

The 1975 amendment substituted "de-

partment of community affairs" for "department of intergovernmental relations" in subsection (7).

#### Debt Limit

Board of county commissioners which overtaxed taxpayers in one year in order to provide a fund out of which expenses for capital improvements and remodeling of airport, which expenses exceeded \$21,000, clearly violated Art. XIII, § 5, 1889 Montana Constitution by incurring a liability for over \$10,000 without the approval of a majority of the electors of the county; county was not able to argue that "no indebtedness or liability" had been created because the money was already on hand. Extraordinarily high levy created a "reserve fund" to be used for capital improvements which is not allowable due to restriction in § 1-804 of reserve funds to improvement of surfaces of runways or ramps. *Burlington Northern Inc. v. Flathead County*, —M —, 512 P 2d 710.

#### Repealing Clause

Section 2 of Ch. 5, 2nd Ex. Laws 1971 read "Section 16-2048, R. C. M. 1947, is repealed."

#### Effective Date

Section 3 of Ch. 5, 2nd Ex. Laws 1971 provided the act should be in effect from and after its passage and approval. Approved June 29, 1971.



**16-1906. (4613.5) Appropriations—transfers, etc.****Justice Courts**

Specific statute (93-412) mandating commissioners to pay actual and necessary expenses of justice courts, controlled where justice of peace incurred unforeseen

work load and hired part-time, temporary clerk, and county commissioners had duty to pay this expense, even though it was not budgeted. State ex rel. Browman v. Wood, — M —, 543 P 2d 184.

**16-1909. (4613.8) Department of community affairs to make rules—accounting systems.** The department of community affairs shall make rules and classifications, and prescribe forms, necessary to carry out the provisions of sections 16-1901 through 16-1904 and 16-1906 through 16-1911, to define what expenditures are chargeable to each budget account, and to establish accounting and cost systems necessary to provide accurate budget information.

**History:** En. Sec. 8, Ch. 148, L. 1929; amd. Sec. 67, Ch. 348, L. 1974; amd. Sec. 26, Ch. 213, L. 1975.

partment of intergovernmental relations" for "state examiner"; and made minor changes in punctuation and phraseology.

**Amendments**

The 1974 amendment substituted "de-

The 1975 amendment substituted "department of community affairs" for "department of intergovernmental relations."

**CHAPTER 20—COUNTY FINANCE—BONDS AND WARRANTS****Section**

- 16-2001. Investments of sinking funds of counties, cities, and towns—protection and keeping of bonds, securities, and any time or savings deposits.
- 16-2002. County registered warrants—interest.
- 16-2008. Board of county commissioners may issue bonds for certain purposes.
- 16-2010. Limitation on amount of bonds—issuance in excess of limitations void.
- 16-2010.1. Limit on city-county consolidated indebtedness.
- 16-2011. Term of bonds—power to redeem—maximum interest.
- 16-2021. Petition and election required for bonds issued for other purposes.
- 16-2022. Form, contents, and proof of petition.
- 16-2026. Registration.
- 16-2031. Notice to the board of investments.
- 16-2032. Sale of bonds.
- 16-2036. Delivery of bonds—payment for same.
- 16-2041. County bond funds.
- 16-2046. Exchange of bonds for amortization bonds.
- 16-2049. Petty cash fund.
- 16-2050. Investment of county special fund moneys in county warrants and investment of county high school moneys.

**16-2001. (4622.1) Investments of sinking funds of counties, cities, and towns—protection and keeping of bonds, securities, and any time or savings deposits.** The board of county commissioners of a county, and the council or commission of a city or town, shall invest so much of the bond sinking funds of the county, city, or town, as is not needed for the payment of bonds or interest coupons, in United States government bonds or securities, state bonds or securities, time or savings deposits, county, city, or school district bonds, county or city warrants, or other bonds or securities which are supported by general taxation, except irrigation district bonds and special improvement district or maintenance district bonds or warrants. All those investments must first be approved by the department of intergovernmental relations. All those bonds, securities, or time or savings deposits must be due and payable at least sixty (60) days before



the obligations, for the payment of which the sinking fund was established, are due and payable. If any of the bonds for which the sinking fund was established are not yet due but are then redeemable under optional provisions, the sinking funds are not subject to investment but shall be used and applied in payment and redemption of the bonds. The bonds, securities, and any time or savings deposits in which any sinking funds are invested shall be kept in the custody of the county, city, or town treasurer and held by him for the benefit of the county, city, or town. The treasurer shall properly protect the bonds, securities, and any time or savings deposits by insurance, the use of safety deposit boxes, or other means, the expense of which is a proper charge against the county, city, or town. All moneys derived from interest on sinking fund investments as authorized by this section, shall be credited by the treasurer of the county, city, or town to the sinking fund for which the investment was made.

History: En. Sec. 1, Ch. 86, L. 1923; amd. Sec. 1, Ch. 37, L. 1939; amd. Sec. 1, Ch. 11, L. 1963; amd. Sec. 68, Ch. 348, L. 1974.

#### Amendments

The 1974 amendment substituted "department of intergovernmental relations" for "state examiner" in the second sentence; and made minor changes in punctuation and phraseology.

**16-2002. (4625) County registered warrants—interest.** All county warrants hereafter issued, after having been presented to the county treasurer for payment and by him endorsed "Not paid for want of funds in the treasury," from and after the date of such presentation and endorsement, shall draw interest at the rate fixed by the county board in accordance with law.

History: En. Sec. 1, p. 99, L. 1899; re-en. Sec. 2915, Rev. C. 1907; re-en. Sec. 4625, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1941; amd. Sec. 23, Ch. 234, L. 1971.

#### Amendments

The 1971 amendment substituted "fixed by the county board in accordance with law" for "of four (4%) per cent per annum" at the end of the section.

**16-2008. (4630.1) Board of county commissioners may issue bonds for certain purposes.** The board of county commissioners of every county of the state is hereby vested with the power and authority to issue, negotiate and sell coupon bonds on the credit of the county, as hereinafter in this act more specifically provided, for any of the following purposes:

(a) to (g). \* \* \* [Same as parent volume.]

(h) Whenever the total indebtedness of a county exceeds five per centum (5%) of the value of the taxable property therein and the board of county commissioners of said county finds and determines that the county is unable to pay and discharge such indebtedness in full, the said board of county commissioners shall have the power and authority to negotiate with the holders of the bonds of said county for an agreement or agreements whereby said bondholders agree to accept less than the full amount of such bonds and the accrued unpaid interest thereon in full payment and satisfaction thereof, to enter into such agreement or agreements and to issue refunding bonds for the amount agreed upon. These bonds may be issued in more than one series if the circumstances so require and each series may be either amortization bonds or serial bonds.

The plan agreed upon between the board of county commissioners and the bondholders shall be embodied in full in the resolution providing for the issue of such bonds.

**History:** En. Sec. 1, Ch. 188, L. 1931; amd. Sec. 1, Ch. 135, L. 1937; amd. Sec. 1, Ch. 136, L. 1963; amd. Sec. 12-102, Ch. 197, L. 1965; amd. Sec. 5, Ch. 100, L. 1973.

#### Amendments

The 1973 amendment deleted "The constitutional limitation of" before "five per centum" near the beginning of subdivision (h).

**16-2010. (4630.3) Limitation on amount of bonds—issuance in excess of limitations void.** No county shall issue bonds for any purpose which, with all outstanding bonds and warrants, except county high school bonds and emergency bonds, will exceed two and one-half per centum (2½%) of the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the issuance of such bonds; provided, however, that a county may issue bonds which, with all outstanding bonds and warrants will exceed two and one-half per centum (2½%), but will not exceed five per centum (5%) of the value of such taxable property, when necessary to do so for the purpose of acquiring land for a site for county high school buildings and for erecting or acquiring buildings thereon and furnishing and equipping the same for county high school purposes; provided, however, that this act shall not be construed to extend limitations on bonded indebtedness for county high school purposes, as fixed by section 75-4114, and acts amendatory thereof; and further provided, that the foregoing limitations shall not apply to refunding bonds issued for the purpose of paying or retiring county bonds lawfully issued prior to January 1, 1932. All bonds issued by any county in excess of the limitations herein fixed shall be null and void.

**History:** En. Sec. 3, Ch. 188, L. 1931; amd. Sec. 1, Ch. 115, L. 1933; amd. Sec. 2, Ch. 135, L. 1937; amd. Sec. 12-103, Ch. 197, L. 1965; amd. Sec. 6, Ch. 100, L. 1973; amd. Sec. 6, Ch. 391, L. 1973.

tion, was repealed by Sec. 1, Ch. 83, Laws 1951.

#### Amendments

The 1973 amendments deleted a final sentence reading: "The words 'value of the taxable property,' as used in this section, are used in the same sense as in section 5 of article XIII, of the constitution, and shall be given the same meaning and construction."

#### Compiler's Notes

This section was amended twice in 1973, once by ch. 100, and once by ch. 391. The amendments were identical.

Section 75-4114, referred to in this sec-

**16-2010.1. Limit on city-county consolidated indebtedness.** No city-county consolidated local government may issue bonds for any purpose which, with all outstanding indebtedness, may exceed 27% of the taxable value of the property therein subject to taxation, as ascertained by the last assessment for state and county taxes. However, for the purpose of constructing a sewerage system or procuring a water supply or constructing or acquiring a water system for a city-county consolidated government which shall own and control such water supply and water system and devote the revenues therefrom to the payment of the debt, a city-county consolidated government may incur an additional indebtedness by borrowing money or issuing bonds. The additional indebtedness, which may be incurred by borrowing money or issuing bonds for the construction of a sewerage system or for the procurement of a water supply or for both such purposes, may



not in the aggregate exceed 10% over and above the 27% heretofore referred to of the taxable value of the property therein subject to taxation as ascertained by the last assessment for state and county taxes. The issuing of bonds for the purpose of funding or refunding outstanding warrants or bonds is not the incurring of a new or additional indebtedness but is merely the changing of the evidence of outstanding indebtedness.

**History:** En. 16-2010.1 by Sec. 1, Ch. 175, L. 1975; amd. Sec. 39, Ch. 566, L. 1977.

**Title of Act**

An act to establish limitations on the amount of indebtedness which may be incurred by city-county consolidated local governments.

**Amendments**

The 1977 amendment changed the limitation from 7½% of assessed value to 27% of taxable value in the first and third sentences; deleted "including all indebtedness theretofore contracted which is unpaid or outstanding" after "for both such purposes" in the third sentence; and made minor changes in phraseology, punctuation and style.

**16-2011. (4630.4) Term of bonds—power to redeem—maximum interest.** No bonds issued for any of the purposes designated in subdivisions (a), (b), (c), of section 16-2008, shall be for a longer term than twenty (20) years; no bonds issued for any of the purposes designated in subdivisions (d), or (e), of section 16-2008, shall be for a longer term than ten (10) years.

The following limitations as to term shall apply to all bonds issued under subdivision (f) of section 16-2008; No bonds shall be issued for a longer term than ten (10) years, provided, that if the unexpired term of the bonds to be refunded shall be more than ten (10) years then, in such event, the refunding bonds may be issued for such unexpired term; or if such ten (10) year term will require an annual tax levy for payment of such refunding bonds exceeding ten (10) mills on all property subject to taxation in the county, then, in such event, the term may be so extended as to reduce the required annual levy to ten (10) mills, provided, however, that the term shall not under any circumstances exceed twenty (20) years.

No bonds issued for any of the purposes designated in subdivision (g) of section 16-2008 shall be for a longer term than five (5) years.

Bonds issued for any of the purposes designated in subdivisions (h) and (i) of section 16-2008 shall not be for a longer term than will be required to repay the bonds with interest through a tax levy of ten (10) mills on all the property within the county subject to taxation and the term shall not exceed twenty (20) years. The length of the term required shall be estimated and calculated by the board of county commissioners based upon the percentage of valuation of the property upon which taxes are levied and paid within such county as ascertained from the last completed assessment for state and county taxes taking into account probable changes in the taxable valuation and losses in tax collections, provided, however, that irrespective of any miscalculation by the county commissioners in fixing the term of the bonds the county must from year to year make a sufficient tax levy to pay the interest and installments on principal on the bonds as the same fall due.

All bonds issued for a longer term than five (5) years shall be redeemable at the option of the county on any interest payment date after one-half (½) of the term for which they were issued has expired and it shall



be so stated on the face of the bonds. The maximum rate of interest which any of such bonds may bear shall be seven per cent (7%) per annum and shall be payable semiannually.

**History:** En. Sec. 4, Ch. 188, L. 1931; amd. Sec. 2, Ch. 115, L. 1933; amd. Sec. 3, Ch. 135, L. 1937; amd. Sec. 1, Ch. 33, L. 1943; amd. Sec. 6, Ch. 234, L. 1971; amd. Sec. 2, Ch. 284, L. 1973.

#### Amendments

The 1971 amendment increased the maximum rate of interest on bonds authorized

to be issued under this chapter from 6% to 7% per annum; and made a minor change in phraseology.

The 1973 amendment substituted "after one-half ( $\frac{1}{2}$ ) of the term for which they were issued has expired" in the final paragraph for "five (5) years from the date of issue"; and made minor changes in phraseology.

**16-2021. (4630.7) Petition and election required for bonds issued for other purposes.** (1) County bonds for any other purpose than those enumerated in 16-2013 shall not be issued unless authorized at a duly called special or general election at which the question of issuing such bonds was submitted to the qualified electors of the county and approved, as provided in 16-2027. No such bond election may be called unless the board of county commissioners receives a petition, delivered and certified by the county clerk, asking that such election be held and such question be submitted. The petition must be signed by at least 20% of the qualified electors of the county.

(2) The bond election required by this section may not be held any sooner than 60 days after receipt of the petition by the county commissioners and must be held no later than the first general election following the 60-day period.

**History:** En. Sec. 7, Ch. 188, L. 1931; amd. Sec. 12, Ch. 158, L. 1971; amd. Sec. 1, Ch. 347, L. 1977.

#### Amendments

The 1971 amendment deleted "who are taxpayers upon property within the county and whose names appear on the last completed assessment roll for state and county taxes" from the end of the section.

The 1977 amendment designated the former section as subsection (1); substituted "may" for "shall" in the second sentence of subsection (1); inserted "delivered and certified by the county clerk" in the second sentence of subsection (1); added subsection (2); and made minor changes in phraseology, punctuation and style.

**16-2022. (4630.8) Form, contents, and proof of petition.** (1) Every petition for the calling of an election to vote upon the question of issuing county bonds shall plainly and clearly state the purpose or purposes for which the proposed bonds are to be issued and shall contain an estimate of the amount necessary to be issued for such purpose or purposes. There may be a separate petition for each purpose, or two or more purposes may be combined in one petition if each purpose, with an estimate of the amount of bonds necessary to be issued therefor, is separately stated in the petition. Such petition may consist of one sheet or of several sheets identical in form and fastened together after being circulated and signed so as to form a single complete petition before being delivered to the county clerk. The petition shall give the post-office address and voting precinct of each person signing the same.

(2) Only persons who are qualified to sign such petitions shall be qualified to circulate the same, and there shall be attached to the completed petition the affidavit of some person who circulated or assisted in circulating

such petition that he believes the signatures thereon are genuine and that the signers knew the contents thereof before signing. The completed petition shall be filed with the county clerk who shall, within 15 days thereafter, carefully examine the petition and the county records showing the qualifications of the petitioners and attach thereto a certificate under his official signature and the seal of his office, which certificate shall set forth:

(a) the total number of persons who are registered electors;

(b) which and how many of the persons whose names are subscribed to the petition possess all of the qualifications required of signers of such a petition;

(c) whether such qualified signers constitute more or less than 20% of the registered electors of the county.

(3) After completing the certificate required by subsection (2), the county clerk shall deliver the certified petition to the board of county commissioners.

**History:** En. Sec. 8, Ch. 188, L. 1931; amd. Sec. 13, Ch. 158, L. 1971; amd. Sec. 2, Ch. 347, L. 1977.

#### Amendments

The 1971 amendment deleted "and whose names appear upon the last completed assessment roll for state and county taxes" from the end of subdivision (1); substituted "registered electors of the county" at the end of subdivision (3) for

"registered electors whose names appear upon the last completed assessment roll for state and county taxes"; and made a minor change in phraseology.

The 1977 amendment inserted subsection designations (1) and (2); redesignated former subdivisions (1) through (3) as subdivisions (2)(a) through (2)(c) respectively; added subsection (3); and made minor changes in phraseology, punctuation and style.

**16-2026. (4630.12) Registration.** Upon the adoption of the resolution calling for the election, the county clerk must cause to be published in the official newspaper of the county a notice, signed by him, stating that registration for such bond election will close at noon on the fifteenth day prior to the date for holding such election and at that time the registration books shall be closed for such election. Such notice must be published at least ten (10) days prior to the day when such registration books will be closed.

After the closing of the registration books for such election the county clerk shall promptly prepare lists of the registered electors of such voting precinct who are entitled to vote at such election, and shall prepare precinct registers for such election, as provided in section 23-3012, and deliver the same to the judges of election prior to the opening of the polls. It shall not be necessary to publish or post such list of qualified electors.

**History:** En. Sec. 12, Ch. 188, L. 1931; amd. Sec. 1, Ch. 138, L. 1939; amd. Sec. 18, Ch. 64, L. 1959; amd. Sec. 14, Ch. 158, L. 1971.

#### Amendments

The 1971 amendment deleted from the beginning of the section a sentence reading "In all county bond elections hereafter held only qualified registered electors residing within the county, who are taxpayers upon property therein and whose

names appear upon the last completed assessment roll for state, county and school district taxes, shall have the right to vote"; deleted "who are taxpayers upon property within the county and whose names appear on the last completed assessment roll for state, county and school district taxes, and" before "who are entitled to vote" in the first sentence of the second paragraph; and substituted a reference to section 23-3012 for a reference to section 23-515.



**16-2029. (4630.15) Form of notice of sale of bonds.****Compiler's Notes**

Section 100, Ch. 326, Laws 1974, substituted "board of investments" in this sec-

tion for "state board of land commissioners."

**16-2031. (4630.17) Notice to the board of investments.** At the same time the notice is sent to the official newspaper of the county for publication the county clerk shall send a copy of the notice to the board of investments and shall furnish to the board of investments a transcript of the proceedings had for the issuance of bonds, and any other information relating thereto as the board of investments may find necessary.

**History:** En. Sec. 17, Ch. 188, L. 1931; amd. Sec. 3, Ch. 326, L. 1974.

ences to "board of investments" throughout this section for references to "state board of land commissioners" and its secretary; and made minor changes in phraseology.

**Amendments**

The 1974 amendment substituted refer-

**16-2032. (4630.18) Sale of bonds.** The board of county commissioners shall meet at the time and place fixed in the notice to consider bids for the bonds. The bonds shall be sold at not less than par and accrued interest to date of delivery, and each bidder shall specify the form of bonds to be issued, whether amortization or serial, and the rate of interest at which he will purchase the bonds. A bid for amortization bonds shall have the preference over a bid for serial bonds, all other things being equal, and in determining the kind of bonds to be issued the board shall take into consideration not only the rate of interest demanded on each kind, but also all other known elements affecting the interests of the county, and for the board shall accept the bid which they shall judge most advantageous to the county. No attorney fees, brokerage or other fees, or commission of any kind shall be paid to any person or corporation for assisting in the proceedings, or in the preparation of the bonds, or in negotiating the sale thereof. The board is authorized to reject any or all bids and to sell the bonds at private sale if they deem it for the best interests of the county; provided, however, that such bonds shall not be sold at less than par and accrued interest to date of delivery.

**History:** En. Sec. 18, Ch. 188, L. 1931; amd. Sec. 9, Ch. 234, L. 1971.

viso to the third sentence; deleted "shall not bear a greater rate of interest than six per centum (6%) and" after "such bonds" in the proviso to the last sentence; and made a minor change in punctuation.

**Amendments**

The 1971 amendment deleted the pro-

**16-2036. (4630.22) Delivery of bonds — payment for same.** If the board of investments is the purchaser of the bonds, the county treasurer shall forward the registered bonds to the department of administration who shall deliver them to the state treasurer and payment therefor shall be made in the manner provided by law. If the bonds are purchased by other investors the county treasurer shall deliver the bonds to the purchaser upon receiving full payment therefor. All moneys arising from the sale of the bonds shall be paid to the county treasurer and shall be immediately available for the purpose for which the bonds were issued and for no other purpose.



History: En. Sec. 22, Ch. 188, L. 1931; amd. Sec. 4, Ch. 326, L. 1974.

#### Amendments

The 1974 amendment substituted "board of investments" at the beginning of this

section for "board of land commissioners"; substituted "department of administration" in the first sentence for "secretary of the board"; and made minor changes in phraseology.

**16-2041. (4630.27) County bond funds.** The county treasurer of each county shall keep in his books a special and separate sinking and interest fund account for each series or issue of outstanding bonds issued by his county, and each such fund must at all times show the exact condition thereof. All taxes collected for interest and principal on county bonds shall be placed to the credit of the sinking and interest fund for which the same were levied, and such fund shall not be used for any purpose other than the payment of principal and interest on such bonds so long as any of such bonds remain outstanding. Provided, however, that interest from investment of moneys of the sinking and interest fund accounts of the bonds of any series or issue may, in the discretion of the board of county commissioners, be used as it accrues to fulfill or complete the specific project for which the bonds were issued. When all bonds of any series or issue, with the interest thereon, have been fully paid, or called in for payment, and there remains in the sinking and interest fund for such series or issue any amount not required for the payment of such bonds and interest, or not used as above provided, such excess amount and all amounts subsequently collected for such fund shall be transferred to the general fund of the county, or to the sinking and interest fund of any other series or issue of bonds outstanding that the board of county commissioners may designate.

History: En. Sec. 27, Ch. 188, L. 1931; amd. Sec. 1, Ch. 103, L. 1973.

#### Amendments

The 1973 amendment inserted the proviso constituting the third sentence; and

inserted "or not used as above provided" after "not required for the payment of such bonds and interest" in the final sentence.

### 16-2043. (4630.29) Redemption of bonds before maturity.

#### Compiler's Notes

Section 100, Ch. 326, Laws of 1974 substituted "board of investments" in this

section for "state board of land commissioners."

**16-2046. (4630.32) Exchange of bonds for amortization bonds.** Subject to the approval of the board of investments the board of county commissioners of any county is hereby vested with the power and authority to issue amortization bonds for the purpose of refunding any outstanding bonds of such county held by the state of Montana and which were not issued either as amortization or serial bonds, whether such bonds are due or not, and to exchange the same for such outstanding bonds. Such amortization bonds shall conform in all respects to the definition of amortization bonds as set forth in section 16-2012, and shall bear interest at such rate as may be agreed upon between the board of county commissioners and the board of investments. Such amortization bonds may be issued and exchanged for such outstanding bonds without submitting the question of issuing the same to an election, and it shall not be necessary to publish any notice of sale of such bonds. This section shall not be construed so as to

deprive boards of county commissioners of the right to advertise, sell and issue refunding bonds in the manner provided by this act.

History: En. Sec. 32, Ch. 188, L. 1931; amd. Sec. 24, Ch. 234, L. 1971; amd. Sec. 100, Ch. 326, L. 1974.

#### Amendments

The 1971 amendment deleted from the

end of the second sentence "but which shall not exceed six per centum (6%) per annum."

The 1974 amendment substituted "board of investments" throughout this section for "state board of land commissioners."

### 16-2048. (4631) Repealed.

#### Repeal

Section 16-2048 (Sec. 371, 5th Div. Rev. Stat. 1879), relating to transfer of surplus

county funds, was repealed by Sec. 2, Ch. 5, 2nd Ex. L. 1971.

**16-2049. (4632) Petty cash fund.** The board of county commissioners, with the approval of the department of community affairs, may set aside a sum of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) out of the general fund, which shall be known as a petty cash fund, for the purpose of paying incidental expenses such as freight, express, postage, and other similar items which must be paid in cash at time of delivery. In counties having a county auditor, the county auditor is responsible for expenditures from the petty cash fund. In counties not having a county auditor, the county clerk is responsible for expenditures from the petty cash fund.

History: En. Sec. 4257, Pol. C. 1895; re-en. Sec. 2922, Rev. C. 1907; re-en. Sec. 4632, R. C. M. 1921; amd. Sec. 1, Ch. 141, L. 1925; amd. Sec. 69, Ch. 348, L. 1974; amd. Sec. 27, Ch. 213, L. 1975.

#### Amendments

The 1974 amendment substituted "de-

partment of intergovernmental relations" for "state examiner" in the first sentence; and made minor changes in punctuation and phraseology.

The 1975 amendment substituted "department of community affairs" for "department of intergovernmental relations."

**16-2050. (4639.1) Investment of county special fund moneys in county warrants and investment of county high school moneys.** (1) Except as provided in subsection (2) of this section, whenever the county has under its control any moneys, for which there is no immediate demand, in any special fund subject to deposit which in the judgment of the board of county commissioners it would be advantageous to invest in county warrants, the county commissioners are authorized in their discretion to direct the county treasurer to purchase county warrants of the same county, thereafter issued against funds in which there is not sufficient money to pay such county warrants at the time of issuance, and in case of such purchase the county commissioners shall designate the fund or funds, to be so invested, and shall fix the amount thereof, and shall also designate the county warrant or warrants which are to be purchased by such funds. The county clerk and recorder shall thereupon cause to be attached to or stamped, written or printed upon the warrants so ordered to be purchased a notice to the effect that the county will exercise its preference right to purchase such warrant. The county treasurer shall thereafter when such county warrant is presented to him, purchase the same out of the proper fund as designated by the board of county commissioners, and the warrant so purchased shall be registered as other county warrants, and bear interest as



provided by law. When the designated amounts have been invested the county treasurer shall notify the county clerk and recorder. Public funds realized from the sale of bonds by a county for the purpose of constructing public buildings, or for other construction, may be invested in any time or savings deposits, United States certificates of indebtedness, United States treasury notes or United States treasury bonds having a maturity date of one (1) year or less when emergency conditions, beyond the control of the county commissioners, exist which preclude the construction of the projects for which the bonds were issued at the time such investments are made. Interest earned from such investments, including interest on the sale of bonds accrued in the period between the date of issue and the time of purchase, shall be credited to the sinking fund of the county, notwithstanding the provisions of subsection (6) of section 16-2618.

(2) Whenever the county has under its control any moneys realized from the sale of bonds by a county high school for the purpose of construction, for which there is no immediate demand, which in the judgment of the governing body of the county high school it would be advantageous to invest in any time or savings deposits or in short-term obligations of the United States of America, such governing body may in its discretion direct the county treasurer to make such investments. Interest earned from such investments, except interest on the sale of bonds accrued in the period between the date of issue and the time of purchase which must be credited to the sinking fund, may be credited to the sinking fund of the said county high school, provided that in the event construction of said buildings is delayed for a period longer than six (6) months due to court action or other causes beyond the control of the trustees, the trustees may direct that interest earned be credited to the fund from which the money was withdrawn. The trustees may authorize expenditures from interest earned, except as provided above, for furnishing and equipping the buildings for which the bonds were sold.

(3) No provision of this section may be construed to prevent the investment of county or county high school moneys under the state unified investment program established in Title 79, chapter 3.

**History:** En. Sec. 1, Ch. 144, L. 1927; amd. Sec. 1, Ch. 151, L. 1951; amd. Sec. 1, Ch. 223, L. 1961; amd. Sec. 1, Ch. 13, L. 1963; amd. Sec. 1, Ch. 268, L. 1969; amd. Sec. 1, Ch. 421, L. 1973; amd. Sec. 1, Ch. 304, L. 1975.

#### **Amendments**

The 1969 amendment added the last sentence to subsection (1); inserted "except interest \* \* \* must be credited to the sinking fund" after "such investments," substituted "may be credited" for "shall be credited," deleted "notwithstanding the provisions of subsection (6) of section 16-2618" at the end of the second sentence

and added the proviso; and added the third sentence to subsection (2).

The 1973 amendment added subsection (3).

The 1975 amendment deleted "school district or" before "county high school" in two places in subsection (2); and deleted "school district" before "or county high school" in subsection (3).

#### **Effective Date**

Section 2 of Ch. 421, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 21, 1973.

### **CHAPTER 23—VOTE NECESSARY ON PROPOSAL TO RAISE MONEY**

#### **16-2306. (4722) Form of ballots—voting.**



**Modification of Project**

Referendum ballot for approval or disapproval of bond issue to provide funds for construction of a sports arena was not so misleading as to make a vote meaningless where the ballot provided that the funds were to be used for: (1) construction of a multi-use building; (2) construction cost of which was three million dollars; (3) issuance of bonds not to

exceed twenty years; (4) equipping said building; (5) locating the same at the Midland Empire Fairgrounds; (6) a seating capacity of at least 10,000 persons; (7) an arena area of approximately 250 feet by 400 feet. Modification of the dimensions of the arena area from 250 feet by 400 feet to 350 feet by 350 feet was within the discretion of the board of county commissioners. *Murphy v. McClintock*, 160 M 355, 503 P 2d 1013.

**CHAPTER 24—COUNTY OFFICERS—QUALIFICATIONS—  
GENERAL PROVISIONS**

**Section**

- 16-2401. General qualifications for county office.
- 16-2402. General qualifications for district and township offices.
- 16-2404. Township officers.
- 16-2406. County and other officers, when elected or appointed and term of office.
- 16-2409. County and township officers may generally appoint deputies or assistants at discretion.
- 16-2412. Vacancies, how filled.
- 16-2413. Keep office at county seat.
- 16-2420. County commissioners to designate class.

**16-2401. (4723) General qualifications for county office.** No person is eligible to a county office who at the time of his election is not of the age of voting as required by the Montana constitution, a citizen of the state, and an elector of the county in which the duties of the office are to be exercised, or for which he is elected.

**History:** En. Sec. 4310, Pol. C. 1895; re-en. Sec. 2955, Rev. C. 1907; re-en. Sec. 4723, R.C.M. 1921; amd. Sec. 1, Ch. 423, L. 1971. Cal. Pol. C. Sec. 4101.

**Amendments**

The 1971 amendment substituted "age of voting as required by the Montana constitution" for "age of twenty-one years."

**16-2402. (4724) General qualifications for district and township offices.** No person is eligible to a district or township office who is not of the age of voting as required by the Montana constitution, a citizen of the state, and an elector of the district or township in which the duties of the office are to be exercised, or for which he is elected.

**History:** En. Sec. 4311, Pol. C. 1895; re-en. Sec. 2956, Rev. C. 1907; re-en. Sec. 4724, R.C.M. 1921; amd. Sec. 2, Ch. 423, L. 1971. Cal. Pol. C. Sec. 4102.

**Amendments**

The 1971 amendment substituted "age of voting as required by the Montana constitution" for "age of twenty-one years."

**16-2403. (4725) Repealed.****Repeal**

Section 16-2403 (Sec. 4312, Pol. C. 1895; Sec. 1, Ch. 112, L. 1913), enumerating the county officers, was repealed by Sec. 23,

Ch. 123, Laws 1973. Chapter 491, Laws of 1973 purported to amend this section, but such amendment was void under section 43-515.

**16-2404. (4726) Township officers.** The officers of townships are as provided elsewhere in this code, or by the board of county commissioners.

**History:** En. Sec. 4313, Pol. C. 1895; re-en. Sec. 2958, Rev. C. 1907; re-en. Sec. 4726, R. C. M. 1921; amd. Sec. 10, Ch. 491,

L. 1973; amd. Sec. 2, Ch. 253, L. 1975. Cal. Pol. C. Sec. 4104.

**Amendments**

The 1973 amendment deleted "two justices of the peace" after "officers of townships are."

The 1975 amendment substituted "are as provided elsewhere" for "are two constables, and such other inferior and subordinate officers as are provided for elsewhere."

**16-2406. (4728) County and other officers, when elected or appointed and term of office.** There may be elected or appointed in each county the following county officers who shall possess the qualifications for suffrage prescribed by the constitution of the state of Montana, and such other qualifications as may be prescribed by law:

One (1) county attorney; one (1) clerk of the district court; one (1) county clerk who shall be clerk of the board of county commissioners and ex officio recorder; one (1) sheriff; one (1) treasurer, who shall be collector of the taxes; one (1) county superintendent of schools; one (1) county surveyor; one (1) assessor; one (1) coroner; one (1) public administrator; and at least one (1) justice of the peace. Persons elected to the different offices named in this section shall hold their respective offices for the term of four (4) years, and until their successors are elected and qualified. Persons appointed to the different offices serve at the pleasure of the commissioners.

The commissioners may appoint, at their discretion, constables, but not more than one (1) constable for each justice of the peace court.

County auditors, and all elective township officers, may be elected at each general election as now provided by law. The officers mentioned in this act must take office on the first Monday of January next succeeding their election, except the county treasurer, whose term begins on the first Monday of March next succeeding his election.

Vacancies in all county, township and precinct offices, except that of county commissioners, shall be filled by appointment by the board of county commissioners, and the appointee shall hold his office until the next general election if elective, and if not elective, the appointee serves at the pleasure of the commissioners; provided, however, that the board of county commissioners of any county may, in its discretion, consolidate any two or more of the within named offices and combine the powers and the duties of the said offices consolidated with the exception of the office of the justice of the peace, which office may not be combined or consolidated with any other office other than another justice of the peace office; however, the provisions hereof shall not be construed as allowing one (1) office incumbent to be entitled to the salaries and emoluments of two (2) or more offices; provided, further, that in consolidating county offices, the board of county commissioners shall, six (6) months prior to the general election held for the purpose of electing the aforesaid officers, or six (6) months prior to the appointment of aforesaid officers, make and enter an order, combining any two (2) or more of the within named offices, and shall cause the said order to be published in a newspaper, published and circulated generally in said county, for a period of six (6) weeks next following the date of entry of said order.

History: En. Sec. 4315, Pol. C. 1895; 4728, R. C. M. 1921; amd. Sec. 1, Ch. 134, re-en. Sec. 2960, Rev. C. 1907; re-en. Sec. L. 1939; amd. Sec. 16, Ch. 123, L. 1973;

amd. Sec. 1, Ch. 129, L. 1973; amd. Sec. 12, Ch. 491, L. 1973; amd. Sec. 3, Ch. 253, L. 1975. Cal. Pol. C. Sec. 4109.

#### Amendments

Chapter 123, Laws of 1973, substituted "There may be elected or appointed" for "There shall be elected" at the beginning of the section; inserted references to the county attorney and clerk of the district court at the beginning of the second paragraph; added the third sentence to the second paragraph; substituted "may" for "must" before "be elected" in the first sentence of the fourth paragraph; inserted "if elective, and if not elective, the appointee serves at the pleasure of the commissioners" before the first proviso to the final paragraph; inserted "or six (6) months prior to the appointment of afore-

said officers" in the second proviso to the final paragraph; and made minor changes in style.

Chapter 129, Laws of 1973, inserted the reference to the county attorney at the beginning of the second paragraph; and deleted a reference to county attorneys at the beginning of the fourth paragraph.

Chapter 491, Laws of 1973, inserted the reference to the justice of the peace at the end of the first sentence of the second paragraph; and inserted "with the exception of the office of the justice of the peace, which office may not be combined with any other office other than another justice of the peace office" immediately before the semicolon in the fourth paragraph.

The 1975 amendment inserted the third paragraph.

### 16-2407. (4729) Repealed.

#### Repeal

Section 16-2407 (Sec. 4316, Pol. C. 1895), relating to elections and terms of county

commissioners, was repealed by Sec. 58, Ch. 100, Laws 1973 and Sec. 23, Ch. 123, Laws 1973.

**16-2409. (4731) County and township officers may generally appoint deputies or assistants at discretion.** Every county and township officer, except justice of the peace, may appoint as many deputies or assistants as may be necessary for the faithful and prompt discharge of the duties of his office. All compensation or salary of any deputy or assistant shall be as provided in this code.

**History:** En. Sec. 4318, Pol. C. 1895; re-en. Sec. 2963, Rev. C. 1907; re-en. Sec. 4731, R. C. M. 1921; amd. Sec. 2, Ch. 309, L. 1973. Cal. Pol. C. Sec. 4112.

#### Amendments

The 1973 amendment deleted "county

assessor and" before "justice of the peace"; inserted "or assistants" following "deputies"; and substituted the second sentence for "but no compensation or salary must be allowed any deputy except as provided in this code."

**16-2412. (4734) Vacancies, how filled.** All vacancies in county and township offices, except county commissioner, are filled by appointment made by the county commissioners. Appointees hold until the vacancies are filled by election if elective offices, and if nonelective offices, appointees serve at the pleasure of the commissioners.

**History:** En. Sec. 4321, Pol. C. 1895; re-en. Sec. 2966, Rev. C. 1907; re-en. Sec. 4734, R. C. M. 1921; amd. Sec. 17, Ch. 123, L. 1973. Cal. Pol. C. Sec. 4115.

#### Amendments

The 1973 amendment added "if elective offices, and if nonelective offices, appointees serve at the pleasure of the commissioners" at the end of the second sentence.

**16-2413. (4735) Keep office at county seat.** All county officers except justices of the peace as set forth in 93-401 must keep their offices at the county seat.

**History:** En. Sec. 4322, Pol. C. 1895; re-en. Sec. 2967, Rev. C. 1907; re-en. Sec. 4735, R. C. M. 1921; amd. Sec. 2, Ch. 276, L. 1974. Cal. Pol. C. Sec. 4116.

#### Amendments

The 1974 amendment inserted "except justices of the peace as set forth in 93-401."



**16-2416. (4738) County officers may administer oaths.****Compiler's Notes**

Section 16-2403 referred to in the text in the parent volume was repealed by Sec. 23, Ch. 123, Laws 1973.

**16-2420. (4742) County commissioners to designate class.** The several boards of county commissioners must, at their regular session in September of each year, make an order designating the class to which such county belongs, as determined by the taxable valuation of such county for the year in which such order is made, under and in accordance with the provisions of section 16-2419, provided that such classification shall not change the government of the county then in existence until the first Monday in January next succeeding.

**History:** En. Sec. 4331, Pol. C. 1895; re-en. Sec. 3, Ch. 20, L. 1905; re-en. Sec. 2975, Rev. C. 1907; re-en. Sec. 4742, R. C. M. 1921; amd. Sec. 1, Ch. 43, L. 1941; amd. Sec. 1, Ch. 40, L. 1974.

**Amendments**

The 1974 amendment substituted "of each year" after "September" near the beginning of the section for "1942, and each four years thereafter."

**16-2427. (4749) Penalties.****Compiler's Notes**

Section 94-35-141 referred to in the text in the parent volume was repealed by Sec. 32, Ch. 513, Laws 1973. For present provisions in Montana Criminal Code of 1973, see sec. 94-7-401.

**CHAPTER 25—CONSOLIDATION OF COUNTY OFFICES****Section**

- 16-2501. Consolidation of county offices—petitions—time for filing—contents.
- 16-2501.1. Initiation of consolidation by county commissioners—procedure.
- 16-2502. Examination of petition—resolution of intent—consolidation by county commissioners—hearing and notice.
- 16-2502.1. Joint hearings.
- 16-2503. Conduct of hearing.
- 16-2504. Commissioners' right to consolidate offices without petition not limited.
- 16-2505. Board's order of consolidation to be published.
- 16-2507. Salary and bond of officer upon consolidation.

**16-2501. (4749.1) Consolidation of county offices—petitions—time for filing—contents.** At any time not later than seven (7) months before the date of any general election at which any county officers are to be elected, a petition in writing may be filed with the board of county commissioners of a county asking for the consolidation of any two or more of said offices by the board of county commissioners of such county. A written petition may also be filed with the boards of county commissioners of counties asking for consolidation of any two (2) or more offices among several counties. Said petition shall be addressed to the board or boards of county commissioners of the counties affected, shall set forth and state the reasons why such consolidation is believed by the petitioners to be necessary, desirable or for the best interests of the county taxpayers, and shall be signed by not less than fifteen per cent (15%) of the qualified electors of such county whose names appear on the registration records thereof, and each person signing such petition shall place after his name his post-office address and voting precinct. In the case of consolidation of offices among several coun-

ties, the petition shall be signed by not less than fifteen per cent (15%) of the qualified electors in each of the counties affected.

**History:** En. Sec. 1, Ch. 125, L. 1935; amd. Sec. 7, Ch. 100, L. 1973; amd. Sec. 1, Ch. 458, L. 1973.

**Compiler's Notes**

This section was amended twice in 1973, once by Chapter 100 and once by Chapter 458. Since the later of the two amendments incorporates the change made by the earlier, the text of the later amendment is used above.

**Amendments**

Chapter 100, Laws of 1973 deleted "enumerated in section 5 of article XVI of the constitution" following "county officers" in the first sentence.

Chapter 458, Laws of 1973 made the same change as did Chapter 100; inserted the second sentence; reduced the signature requirement for the petition from 25% to 15% in the third sentence; added the fourth sentence; and made minor changes in phraseology.

**16-2501.1. Initiation of consolidation by county commissioners—procedure.** The board or boards of county commissioners may initiate the consolidation of county offices under the procedure set forth in this act. Any board or boards of county commissioners desiring to consolidate any two (2) or more offices or any two (2) or more offices among several counties under the provisions of this chapter shall first pass a resolution stating the intent of the board or boards of county commissioners to consider consolidation.

**History:** En. 16-2501.1 by Sec. 2, Ch. 458, L. 1973.

**Title of Act**

An act to amend sections 16-2501, 16-

2502, 16-2503, 16-2505 and 16-2507, R. C. M. 1947, deleting reference to the 1889 constitution and providing for consolidation of offices among counties; implementing article XI, section 3 of the 1972 Montana constitution.

**16-2502. (4749.2) Examination of petition—resolution of intent—consolidation by county commissioners—hearing and notice.** Upon the filing of any such petition the board or boards of county commissioners shall cause the county clerk or clerks to forthwith examine the same and the registration records of the county and if, after such examination, such county clerk or clerks shall report to said board or boards of county commissioners that such petition or petitions has been signed by not less than fifteen per centum (15%) of the qualified electors of the county whose names appear on such registration records, said board or boards shall set a date for a hearing to consider said consolidation. Upon the passage of the resolution of intent by the board or boards of county commissioners proper notice and a date shall be set for a hearing to consider said consolidation. The date for the hearing shall be not more than twenty days after the filing of such petition or the passage of the resolution of intent. The county clerk or clerks shall cause notice of such hearing to be published one time in the official newspaper of the county, which publication must be at least ten days before the date set for said hearing, and if there be no newspaper of general circulation printed and published in said county, then such notice must be posted by the county clerk or clerks, at least ten days before the date set for such hearing, in three public places in the county or counties. Said notice shall either contain a copy of said petition, with the signatures omitted, or a copy of the resolution of intent passed by the board or boards of county commissioners, and shall state the time and place fixed for hearing the same, and

that on such hearing any taxpayer of the county may appear and be heard in support of or in opposition to said petition.

**History:** En. Sec. 2, Ch. 125, L. 1935; amd. Sec. 3, Ch. 458, L. 1973.

#### Amendments

The 1973 amendment inserted "or boards" following "board" throughout the section; inserted "or clerks" following "clerk" throughout the section; inserted "or petitions" following "petition" in the middle of the first sentence; reduced the

signature requirement in the first sentence from 25% to 15%; inserted the second sentence; inserted "or passage of the resolution of intent" at the end of the third sentence; inserted "or a copy of the resolution of intent passed by the board or boards of county commissioners," in the middle of the last sentence; and made minor changes in phraseology.

**16-2502.1. Joint hearings.** Nothing herein shall prevent the boards of county commissioners in counties affected by intercounty consolidation from holding joint hearings provided the proper notice is given in each of the counties affected as set forth in section 16-2502.

**History:** En. 16-2502.1 by Sec. 4, Ch. 458, L. 1973.

**16-2503. (4749.3) Conduct of hearing.** At the time designated in said notice, the county commissioners shall proceed to hear said petition and the evidence for or against the same. Any qualified elector of the county affected shall have the right to appear and be heard upon said petition subject however to the right of the county commissioners to limit cumulative testimony and to prevent the undue prolonging of said hearing. Within five days after the date set for said hearing the board or boards of county commissioners shall make such order in relation to the consolidation of said offices as they shall deem proper.

**History:** En. Sec. 3, Ch. 125, L. 1935; amd. Sec. 5, Ch. 458, L. 1973.

#### Amendments

The 1973 amendment substituted "qual-

ified elector" for "taxpayer" near the beginning of the second sentence; and made minor changes in style and phraseology.

**16-2504. (4749.4) Commissioners' right to consolidate offices without petition not limited.** Nothing herein contained shall be deemed as limiting in any manner the discretion of the county commissioners to consolidate the several offices without the filing of the petition provided for in this act.

**History:** En. Sec. 4, Ch. 125, L. 1935; amd. Sec. 8, Ch. 100, L. 1973.

#### Amendments

The 1973 amendment deleted "named

in the aforesaid article of the constitution" following "several offices" in the latter part of the section.

**16-2505. (4749.5) Board's order of consolidation to be published.** Whenever a board or boards of county commissioners shall make an order consolidating two or more offices such order shall be entered in full on its minutes of proceedings and such order shall be published in a newspaper of general circulation printed and published in the county or counties affected for a period of two successive weeks next following the date of the making and entry of such order.

**History:** En. Sec. 5, Ch. 125, L. 1935; amd. Sec. 9, Ch. 100, L. 1973; amd. Sec. 6, Ch. 458, L. 1973.

#### Compiler's Notes

This section was amended twice in 1973, once by Chapter 100 and once by Chapter



458. Chapter 458 incorporated the changes made by Chapter 100 and made additional changes. Therefore, the compiler has used the text of Chapter 458 above.

#### Amendments

Chapter 100, Laws of 1973 substituted "county offices" for "offices enumerated in

section 5 of article XVI of the constitution."

Chapter 458, Laws of 1973 made the same change as did Chapter 100; reduced the period of publication from six to two successive weeks; and made minor changes in phraseology.

**16-2507. (4749.7) Salary and bond of officer upon consolidation.** When two or more offices are consolidated under a single officer such officer shall receive as salary an amount to be determined by the board or boards of county commissioners, but which amount must not be more than twenty per cent (20%) higher than the highest salary provided by law to be paid to any officer whose duties he is required to perform by reason of such consolidations; provided that the board or boards of county commissioners shall, in June of each fourth year after adoption of this act, adopt a resolution fixing the salary of such officer for the term beginning with the first Monday in January immediately following the adoption of such resolution; provided further, that such officer shall give a bond in an amount equal to the highest bond required by law of any officer whose duties he is required to perform by reason of such consolidation; and provided further, that where county offices are consolidated as hereinbefore described, that the officer of the consolidated offices shall have any deputies they may appoint who shall be approved by the board or boards of county commissioners; and provided further, that the board or boards of county commissioners shall determine the number of deputies, stenographers, and clerks the said officers may appoint.

History: En. Sec. 7, Ch. 125, L. 1935; amd. Sec. 1, Ch. 107, L. 1937; amd. Sec. 1, Ch. 104, L. 1941; amd. Sec. 7, Ch. 458, L. 1973.

#### Amendments

The 1973 amendment substituted "in

June of each fourth year after adoption of this act" in the first proviso for "at the regular meeting of such board in June 1942, and at the regular meeting in June of each fourth year thereafter"; and made minor changes in phraseology.

### CHAPTER 26—COUNTY TREASURER—DUTIES AS TO WARRANTS AND OTHER COUNTY FINANCES

#### Section

16-2601. Duties of county treasurer.

16-2604. Registry of warrants—interest.

16-2618. Deposit of public funds by county, city and town treasurers.

16-2621. Director of department of community affairs to sign trustee and deposit receipts.

16-2625. Must permit department of community affairs and county clerk to examine books.

16-2627. Membership in organizations of county treasurers.

**16-2601. (4750) Duties of county treasurer.** The county treasurer must:

1 to 6. \* \* \* [Same as parent volume.]

7. Notify the county superintendent of the amount of the county school fund in the county treasury subject to apportionment, whenever

required, and inform him of the amount of school moneys belonging to any other fund subject to apportionment, or as otherwise provided by law;

8 and 9. \* \* \* [Same as parent volume.]

**History:** En. Sec. 4350, Pol. C. 1895; re-en. Sec. 2986, Rev. C. 1907; re-en. Sec. 4750, R. C. M. 1921; amd. Sec. 3, Ch. 452, L. 1975. Cal. Pol. C. Sec. 4144.

#### Amendments

The 1975 amendment added "or as other-

wise provided by law" to the end of subdivision 7.

#### Cross-References

School appropriations, entering on accounting records of county treasurer, sec. 75-6809.

**16-2604. (4753) Registry of warrants—interest.** When any county warrant, any high school warrant or any school district warrant hereafter issued is presented to the treasurer for payment and the same is not paid for want of funds, the treasurer must endorse thereon, "not paid for want of funds," annexing the date of presentation, and sign his name thereto; and from that time until paid the warrant shall bear interest at a rate fixed by the board of trustees in accordance with law.

**History:** Ap. p. Sec. 4353, Pol. C. 1895; amd. Sec. 2, p. 99, L. 1899; re-en. Sec. 2989, Rev. C. 1907; re-en. Sec. 4753, R.C.M. 1921; amd. Sec. 2, Ch. 15, L. 1941; amd. Sec. 1, Ch. 53, L. 1945; amd. Sec. 25, Ch. 234, L. 1971. Cal. Pol. C. Sec. 4148.

#### Amendments

The 1971 amendment substituted "a

rate fixed by the board of trustees in accordance with law" for "four (4%) per cent per annum" at the end of the section.

#### Cross-References

School warrants, recording and payment, sec. 75-6811.

### 16-2615. (4764) Repealed.

#### Repeal

Section 16-2615 (Sec. 4364, Pol. C. 1895), relating to when treasurer must sue coro-

ner, was repealed by Sec. 64, Ch. 184, Laws 1977.

**16-2618. (4767) Deposit of public funds by county, city and town treasurers.** (1) It shall be the duty of all county, city and town treasurers to deposit all public moneys in their possession and under their control in any solvent banks, building and loan associations or savings and loan associations located in the county, city or town of which such treasurer is an officer, subject to national supervision or state examination as the local governing body may designate, and no other. The treasurer shall take from such bank, building and loan association or savings and loan association such security as the local governing body may prescribe, approve and deem fully sufficient and necessary to insure the safety and prompt payment of all such deposits, together with the interest on any time or savings deposits, provided that said local governing body is hereby authorized to deposit such public moneys not necessary for immediate use by such county, city or town with any bank, building and loan association or savings and loan association authorized hereinabove in a savings or time deposit; provided that the bank or banks or building and loan association or savings and loan association in which the money is deposited shall pay on the moneys no less than the rate of interest as is paid on money from private sources on the same terms. Refusal of any

bank, building and loan association or savings and loan association to pay said interest rate shall constitute a waiver of that institution's right to participate in the deposit of public funds as set forth in this act, and provided that said local governing body is hereby authorized to invest such public moneys not necessary for immediate use by such county, city or town, in direct obligations of the United States government, payable within not to exceed one hundred eighty (180) days from the time of such investment.

(2) Said local governing body may require security for only such portion of deposits as is not guaranteed or insured according to law. Such security shall consist of those enumerated in section 79-307.

(3) When negotiable securities are furnished, such securities may be placed in trust and the trustee's receipt may be accepted in lieu of the actual securities when such receipt is in favor of the treasurer, his successors and the state of Montana, and the form of receipt and the trustee have been approved by the department of community affairs. All warrants or other negotiable securities must be properly assigned or endorsed in blank. It shall be the duty of the local governing body upon the acceptance and approval of any of the above-mentioned bonds or securities, to make a complete minute entry of such acceptance and approval upon the record of their proceedings, and such bonds and securities shall be re-approved at least quarter annually thereafter.

(4) (a) Demand deposits shall be placed only in banks. When more than one bank is available in any county, for the deposit of such county funds, or in any city or town for the deposit of such city or town funds, such demand deposits shall be distributed ratably among all of such banks qualifying therefor, substantially in proportion to paid-in capital and surplus of each such bank willing to receive such demand deposits under the terms of this act, and it shall be the duty of said county, city or town treasurer to prorate all such demand deposits among all of the banks qualified to receive the same as in this act provided, to the end that an equitable distribution of such demand deposits shall be maintained.

(b) Such public moneys not necessary for immediate use by such county, city or town which are not invested in direct obligations of the United States government as authorized herein may be placed in time or savings deposits with any bank, building and loan association or savings and loan association in the county, city or town. When more than one bank, building and loan association or savings and loan association is available in any county, for the deposit of such county funds, or in any city or town for the deposit of such city or town funds, such funds may be distributed ratably among all of such banks, building and loan associations and savings and loan associations qualifying therefor, substantially in proportion to the total property taxes paid in such county or the county in which such city or town is located during the preceding year, including taxes on shares of bank stock, by each such bank, building and loan association or savings and loan association willing to receive such time or savings deposits under the terms of this act.

(c) In lieu of a ratable distribution among banks, building and loan associations, and savings and loan associations within the county, city



or town, the local governing body may solicit bids without advertising from any bank, building and loan association, or savings and loan association in a county having at least two such financial institutions. Such institutions may request in writing that they be listed for solicitation on bids for public moneys not necessary for immediate use by the unit of local government. In counties having less than two such institutions, the local governing body may solicit bids from, and deposit public moneys in, such institutions in neighboring counties unless the local financial institution agrees to pay the same rate of interest bid by the neighboring financial institutions. The governing body may solicit bids by notice sent by mail to the investment institutions whose names are listed as provided herein. The provisions of this section shall be considered as meeting the requirements of section 16-2618 (4) (b).

(5) Whenever it shall come to the attention of the department of community affairs that the funds of any county, city or town are not properly deposited as provided in this act, the department of community affairs shall order the treasurer of such county, city or town to deposit said funds in accordance herewith, and if such treasurer shall refuse or neglect to comply with such order, it shall be the duty of the department of community affairs to institute proceedings against such treasurer at the cost of the county, city or town of which such treasurer is an officer, on the official bond of such treasurer. Any banks, building and loan associations or savings and loan associations receiving such deposits, shall, through its president and cashier or secretary, make a statement quarter annually of account, under oath, showing all such moneys that have been deposited with such bank, building and loan association or savings and loan association during the quarter, the amount of daily balance in dollars, and the amount of interest by such banks, building and loan associations or savings and loan associations credited or paid therefor, and showing that neither such bank, building and loan association or savings and loan association nor any officer thereof, nor any person for it, has paid or given any consideration or emolument whatsoever to the treasurer or to any other person other than the interest provided for herein, for or on account of the making of such deposits, with any such bank, building and loan association or savings and loan association. All such deposits shall be subject to withdrawal by the treasurer in such amounts as may be necessary from time to time, and no deposit of funds shall be made, or permitted to remain in any bank, building and loan association or savings and loan association, until the security for such deposits shall have been first approved by the local governing body and delivered to the treasurer.

(6) All interest paid and collected on such deposits or investments shall be credited to the general fund of the county, city or town to whose credit such funds are deposited. Where moneys shall have been deposited in accordance with the provisions of this act, the treasurer shall not be liable for loss on account of any such deposit that may occur through damage by the elements or for any other cause or reason occasioned through means other than his own neglect, fraud, or dishonorable conduct.

(7) Any bank, building and loan association, or savings and loan

association pledging securities as provided in this act at any time it deems advisable or desirable may substitute like securities for all or any part of the securities pledged. The collateral so substituted shall be approved by the governing body of the county, city or town at its next official meeting. Such securities so substituted shall at the time of substitution be at least equal in principal amount to the securities for which substitution is made. In the event that the securities so substituted are held in trust, the trustee shall, on the same day the substitution is made, forward by registered or certified mail to the county, city or town and to the depository bank, building and loan association or savings and loan association, a receipt specifically describing and identifying both the securities so substituted and those released and returned to the depository bank, building and loan association or savings and loan association.

**History:** Ap. p. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R. C. M. 1921; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304, L. 1975; amd. Sec. 1, Ch. 539, L. 1975. Cal. Pol. C. Sec. 4161.

#### Compiler's Notes

This section was amended four times in 1975, once by Ch. 160, once by Ch. 213, once by Ch. 304, and once by Ch. 539. None of the amendatory acts mentioned the others. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by all four amendments.

#### Amendments

The 1969 amendment rewrote the second sentence of subsection (2).

The 1973 amendment added the second proviso to the second sentence of subsection (1); and inserted that portion of the third sentence of subsection (1) preceding the proviso.

Chapter 43, Laws of 1974, inserted "building and loan associations or savings and loan associations" after "banks" or "bank" throughout the section; substituted "no less than the" near the end of the second sentence of subdivision (1) for "the same"; substituted "institution's" near the beginning of the third sentence of subdivision (1) for "bank's"; divided former subdivision (4) into (a) and (b); inserted subdivision (4)(a) and the first sentence of subdivision (4)(b); substi-

tuted "total property taxes paid in such county or in the county in which such city or town is located during the preceding year, including taxes on shares of bank stock, by each such bank, building and loan association or savings and loan association" in the second sentence of subdivision (4)(b) for "paid-in capital and surplus of each such bank"; inserted "time or savings" before "deposits" near the end of subdivision (4)(b); inserted "or secretary" after "cashier" in subdivision (5); inserted "or the F.S.L.I.C." after "F.D.I.C." in subdivision (8); and made minor changes in style, punctuation, and phraseology.

Chapter 348, Laws of 1974, substituted "department of intergovernmental relations" for "state examiner" once in subsection (3) and in two places in subsection (5).

Chapter 160, Laws of 1975, substituted the present last sentence of subsection (2) for: "Such security shall consist of cashier's check or checks issued by the Federal Reserve Bank, bonds of the United States government and its dependents, bonds guaranteed by the United States government or its dependents, bonds and warrants of the state of Montana, bonds and warrants of any county of the state of Montana, and bonds of any city, town or school district of the state of Montana, which are a general obligation of such county, city, town or school district, bonds of the Federal Land Banks, Federal Intermediate Credit Bank debentures, Federal Home Loan Bank notes and bonds, Bank for Co-operatives' debentures, Federal National Mortgage Association notes, bonds and guaranteed certificates of participation, obligations of or fully guaranteed by the Government National Mortgage Association, Farmers' Home Administration insured notes, notes fully guaranteed as to principal and interest by the Small Business Administration, Federal Housing Administration debentures, general obligation bonds of other states and counties of



other states and bonds issued in the United States of America, which are quoted on the New York market which shall be acceptable at not to exceed ninety per centum (90%) of such market quotation"; and made a minor change in phraseology.

Chapter 213, Laws of 1975, substituted "department of community affairs" in subsections (3) and (5) for "department of intergovernmental relations."

Chapter 304, Laws of 1975, deleted "Except as provided in subsection (8) of this section" from the beginning of subsection (6); deleted subsection (8) which read: "Whenever in the judgment of the trustees of any common school district, high school district, or county high school it would be advantageous to invest any money of such school or school district in savings or time deposits in a state or national bank, building and loan association or savings and loan association insured by the F.D.I.C. or the F.S.L.I.C., or in direct obligations of the United States government, payable within one hundred eighty (180) days from the time of investment, such governing body may in its discretion direct the county treasurer to make such investments. All interest collected on such deposits or investments shall be credited to the fund from which the money was withdrawn, provided that nothing in

this act shall be interpreted to conflict with section 16-2050"; and made a minor change in phraseology.

Chapter 539, Laws of 1975, substituted references to "local governing body" throughout the section for references to "county commissioners" and "city or town council"; substituted "deposit of public funds as set forth in this act" near the end of subsection (1) for "ratable distribution of said money as set forth in subsection (4) of this act"; substituted "may" for "shall" before "be placed in time or savings deposits" near the beginning of subdivision (4)(b); substituted "such funds may be distributed" for "such funds shall be distributed" near the middle of subdivision (4)(b); deleted a clause at the end of subdivision (4)(b) relating to the duty of county, city or town treasurers to prorate deposits in banks and other qualified institutions; added subdivision (4)(c); substituted references to "deposit" in subsection (5) for references to "distribute"; deleted a sentence from subsection (5) which provided that if no qualified bank or other financial institution existed in the particular county, city or town, then deposits could be made in institutions "most convenient" to such county, city or town; and made minor changes in punctuation.

**16-2621. (4767.3) Director of department of community affairs to sign trustee and deposit receipts.** The director of the department of community affairs shall sign all trustee and deposit receipts and releases required to be signed on behalf of the state in all cases where negotiable securities are placed in trust with a trustee in place of the actual securities, for security of county, city, and town deposits, under the laws of the state relating to the deposit of county, city, and town funds.

**History:** En. Sec. 1, Ch. 44, L. 1931; amd. Sec. 70, Ch. 348, L. 1974; amd. Sec. 29, Ch. 213, L. 1975.

#### **Amendments**

The 1974 amendment substituted "di-

rector of intergovernmental relations" for "state examiner"; and made minor changes in phraseology.

The 1975 amendment substituted "department of community affairs" for "department of intergovernmental relations."

**16-2625. (4771) Must permit department of community affairs and county clerk to examine books.** (1) The treasurer must permit the department of community affairs and county clerk or the board of county commissioners to examine his books and count the money in the treasury, when any of them wants to make an examination or counting.

(2) The county clerk and recorder at the close of business each month shall count the cash in the office of the county treasurer and shall retain a copy of the counting in his office.

**History:** En. Sec. 4371, Pol. C. 1895; re-en. Sec. 3007, Rev. C. 1907; re-en. Sec. 4771, R. C. M. 1921; amd. Sec. 1, Ch. 124, L. 1935; amd. Sec. 71, Ch. 348,

L. 1974; amd. Sec. 1, Ch. 61, L. 1975; amd. Sec. 30, Ch. 213, L. 1975. Cal. Pol. C. Sec. 4165.



**Compiler's Notes**

This section was amended twice in 1975, once by Ch. 61 and once by Ch. 213. Neither amendatory act mentioned nor included the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

**Amendments**

The 1974 amendment substituted "department of intergovernmental relations" throughout for "state examiner"; and made minor changes in style and phraseology.

Chapter 61, Laws of 1975, substituted "shall retain a copy of the counting in his office" at the end of subsection (2) for "shall certify the amount in detail to the department of intergovernmental relations, retaining a copy of the certification in his office."

Chapter 213, Laws of 1975, substituted "department of community affairs" for "department of governmental relations" in subsection (1).

**Effective Date**

Section 2 of Ch. 61, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved March 17, 1975.

**16-2627. Membership in organizations of county treasurers.** County treasurers of the state of Montana are authorized and empowered to take out county membership in and to co-operate with associations and organizations of county treasurers of this state for the furtherance of good government and the protection of county interests. Payment for membership in such associations or organizations shall be made from county funds, in such amount as shall be approved by the board of county commissioners.

**History:** En. Sec. 1, Ch. 114, L. 1973.

may take out memberships in certain organizations at the expense of the county.

**Title of Act**

An act to provide that county treasurers

**CHAPTER 27—SHERIFF****Section**

- 16-2702. Duties of sheriff.
- 16-2714. Direction to sheriff must be in writing.
- 16-2723. Mileage and expense of sheriff.
- 16-2724. Purchase or lease of sheriff's vehicle authorized—operation and maintenance costs—mileage.
- 16-2725. Liability insurance for privately owned vehicles when used on official business.
- 16-2726. Department of public safety—supervision by commission.
- 16-2726.1. Appointment of public safety commission members.
- 16-2726.2. Vacancies, succession—compensation.
- 16-2726.3. Organization—selection and duties of chairman—meetings.
- 16-2726.4. Application to existing commissions.
- 16-2727. Sheriff as director—appointed or elected.
- 16-2728. Powers and duties of officers, patrolmen and director.
- 16-2728.1. Hearing procedure for an employee discharged by an appointed director.
- 16-2728.2. Hearing procedure for an employee discharged by an elected director.
- 16-2728.3. Reinstatement of a discharged employee who prevails in district court.
- 16-2729. Salaries.
- 16-2730. Officers' status as deputy sheriff.

**16-2702. (4774) Duties of sheriff.** The sheriff must:

1 to 3. \* \* \* [Same as parent volume.]

4. Perform duties of humane officer within the county with reference to the protection of dumb animals;

5. Attend all courts, except justices and police courts, at their respective terms or sessions held within the county, and obey their lawful orders and directions;

6. Command the aid of as many inhabitants of his county as may be necessary in the execution of these duties;

7 to 9. \* \* \* [Same as parent volume.]

10. Certify in writing upon the process of notices the manner and time of service, or, if he fails to make service, the reasons of this failure, and return the same without delay.

History: En. Sec. 4381, Pol. C. 1895; re-en. Sec. 3010, Rev. C. 1907; re-en. Sec. 4774, R. C. M. 1921; amd. Sec. 1, Ch. 157, L. 1925; amd. Sec. 10, Ch. 535, L. 1975. Cal. Pol. C. Sec. 4176.

#### Amendments

The 1975 amendment deleted "male" before "inhabitants" in subdivision 6; and made minor changes in phraseology.

**16-2714. (4786) Direction to sheriff must be in writing.** No direction or authority by a party or his attorney to a sheriff, in respect to the execution of process or return thereof, or any act or omission relating thereto, is available to discharge or excuse the sheriff from a liability for neglect or misconduct, unless it is contained in a writing signed by the attorney of the party or by the party. If the sheriff will incur substantial costs in transporting, keeping, or storing the property seized, the party requesting service of a writ of execution or attachment shall provide a bond or other security to pay for all costs which may be incurred as a result of the service of such writ.

History: En. Sec. 4393, Pol. C. 1895; re-en. Sec. 3022, Rev. C. 1907; re-en. Sec. 4786, R. C. M. 1921; amd. Sec. 1, Ch. 426, L. 1977. Cal. Pol. C. Sec. 4185.

#### Amendments

The 1977 amendment added the last sentence.

**16-2723. (4885) Mileage and expense of sheriff.** Sheriffs delivering prisoners at the state prison or mentally ill persons at the state hospital, shall receive actual expenses necessarily incurred in their transportation, which shall include the expenses of the sheriff in going and returning from such institution. They shall take vouchers for every item of expenses incurred by them in such transportation, the amount of which expenses, as shown by the said vouchers when served by said sheriff, shall be audited and allowed by the department of administration or by the board of county commissioners, as the case may be, and paid out of the same money and in the same manner as are other expense claims against the state or counties, and no other or further compensation shall be received by sheriffs for such expenses, provided that in determining the actual expense, if travel be by a privately owned vehicle, the mileage rate shall be allowed as herein provided. While in the discharge of his duties, both civil and criminal, the sheriff shall receive a mileage allowance as provided in section 59-801. The sheriff shall also be reimbursed for actual and necessarily incurred expenses for transporting, lodging and meals of person(s) ordered by the court as provided in sections 59-538, 59-539 and 59-801. The county shall not be liable for, nor shall the board of county commissioners pay for any claim of the sheriff or other officer, for any other expense incurred in travel or for subsistence, in cases where mileage is allowed under this section; the fees for mileage named in this section being in full for all such traveling expenses in both civil and criminal work.

**History:** En. Sec. 1, Ch. 86, L. 1905; re-en. Sec. 3137, Rev. C. 1907; re-en. Sec. 4885, R. C. M. 1921; amd. Sec. 3, Ch. 121, L. 1941; amd. Sec. 1, Ch. 59, L. 1949; amd. Sec. 1, Ch. 82, L. 1957; amd. Sec. 85, Ch. 199, L. 1965; amd. Sec. 1, Ch. 455, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 7, Ch. 439, L. 1975.

#### Amendments

The 1973 amendment increased the mileage rate in both places in the third sentence from eleven to twelve cents per mile.

The 1974 amendment substituted "department of administration" in this section for "state controller."

The 1975 amendment substituted the third and fourth sentences for a sentence reading "While in the discharge of his duties, both civil and criminal, the sheriff shall receive twelve cents (\$.12) per mile for each and every mile actually and necessarily traveled; and for transporting any person by order of court, except as hereinbefore provided, he shall receive twelve cents (\$.12) additional per mile, the same to be in full for transporting and dieting of such person during such transportation; provided that where more than one person is transported by the sheriff or when one or more papers are served on the same trip made for the transportation of one or more prisoners, but one mileage shall be charged."

**16-2724. Purchase or lease of sheriff's vehicle authorized—operation and maintenance costs—mileage.** The board of county commissioners may purchase or lease motor vehicles from county funds for the use of the sheriff or any person employed by him and may also pay for the operation and maintenance of those vehicles from county funds. No mileage shall be paid by the county to sheriffs whose vehicles are provided and maintained by the county. All mileage paid to sheriffs whose vehicles are provided and maintained by the county shall be paid over to the county treasurer and deposited in the county general fund.

**History:** En. Sec. 1, Ch. 114, L. 1969; amd. Sec. 1, Ch. 340, L. 1971.

for the operation and maintenance of those vehicles from county funds.

#### Title of Act

An act to provide that the board of county commissioners may purchase or lease motor vehicles from county funds for the use of the county sheriff or any person employed by him and may also pay

#### Amendments

The 1971 amendment deleted "when requested to do so by the county sheriff" after "county commissioners" in the first sentence.

**16-2725. Liability insurance for privately owned vehicles when used on official business.** The board of county commissioners shall provide liability insurance for not more than one (1) privately owned vehicle used by the sheriff, not more than one (1) privately owned vehicle used by the undersheriff, and not more than one (1) privately owned vehicle used by each deputy sheriff when the vehicles are used on official business. The insurance shall be paid for from county funds and shall provide full comprehensive and collision coverage plus minimum coverage of one hundred thousand dollars (\$100,000) for each person for bodily injury and medical expenses, three hundred thousand dollars (\$300,000) for all persons per accident, and fifty thousand dollars (\$50,000) per accident for property damage. This section shall not apply to counties furnishing motor vehicles to the sheriff's department pursuant to the provisions of section 16-2724, R.C.M. 1947.

**History:** En. Sec. 2, Ch. 340, L. 1971.

**16-2726. Department of public safety—supervision by commission.** On agreement of the legislative body of a city or town with the county com-



missioners of the county in which it is located, there may be established, in counties other than first and second class counties, in lieu of a police department and a sheriffs' office, a department of public safety. The department shall be under the supervision of a public safety commission. The commission shall consist of three (3), five (5), or seven (7) members. Each member of the commission shall serve a four (4) year term and shall be appointed as provided in this act.

**History:** En. Sec. 1, Ch. 347, L. 1973;  
amd. Sec. 1, Ch. 146, L. 1975.

#### **Title of Act**

An act to permit consolidation of police departments and sheriffs' offices within a county and providing for salaries of the employees of the consolidated offices thereof.

#### **Amendments**

The 1975 amendment substituted the last three sentences for a sentence which read "The department shall be under the supervision of a commission selected jointly by the county commissioners and the city or town, legislative bodies consisting of not more than seven (7) members."

### **16-2726.1. Appointment of public safety commission members. (1)**

Upon the creation of a three (3) member commission, one (1) member shall be appointed by the legislative body of the city or town, one (1) shall be appointed by the board of county commissioners, and one (1) shall be appointed by the members of the board of county commissioners and the members of the legislative body of the city or town meeting in joint session. In order to be appointed, a candidate for appointment by the joint meeting must receive a majority of the votes of the members of the board of county commissioners and a majority of the votes of the members of the legislative body of the city or town voting on the question of his appointment. Initially, one (1) commission member shall serve a four (4) year term and two (2) commission members shall each serve a two (2) year term. Each commission member shall draw a lot to determine the length of his term.

(2) Upon the creation of a five (5) member commission, two (2) members shall be appointed by the legislative body of the city or town, two (2) shall be appointed by the board of county commissioners, and one (1) shall be appointed by the members of the board of county commissioners and the members of the legislative body of the city or town meeting in joint session. In order to be appointed, a candidate for the appointment to a five (5) member commission by the joint meeting must receive a majority of the votes of the members of the board of county commissioners and a majority of the votes of members of the legislative body of the city or town voting on the question of his appointment. Initially, two (2) commission members shall each serve a four (4) year term and three (3) commission members shall each serve a two (2) year term. Each commission member must draw a lot to determine the length of his term.

(3) Upon the creation of a seven (7) member commission, three (3) members shall be appointed by the legislative body of the city or town, three (3) shall be appointed by the board of county commissioners, and one (1) shall be appointed by the members of the board of county commissioners and the members of the city or town meeting in joint session. In order to be appointed, a candidate for the appointment to a seven (7) member commission by the joint meeting must receive a majority of

the votes of the members of the board of county commissioners and a majority of the votes of the members of the legislative body of the city or town voting on the question of his appointment. Initially, three (3) commission members shall each serve a four (4) year term and four (4) commission members shall each serve a two (2) year term. Each commission member shall draw a lot to determine the length of his term.

(4) Each commission member shall reside at the time of his appointment within the county if selected by the board of county commissioners or within the city or town by which appointed.

(5) No commission member may be an official of any unit of local government.

**History:** En. 69-2726.1 by Sec. 2, Ch. 146, L. 1975.

**Compiler's Notes**

This section and sections 16-2726.2 to 16-2726.4 were enacted as sections 69-2726.1 to 69-2726.4 by Ch. 146, Laws of 1975, and renumbered by the Legislative Council as 16-2726.1 et seq.

**Title of Act**

An act to revise the powers of the commission supervising a department of public safety; to establish appeal procedures for employees discharged or terminated by the director of a department of public safety; amending sections 16-2726, 16-2727, 16-2728 and 16-2729, R. C. M. 1947.

**16-2726.2. Vacancies, succession—compensation.** (1) In case of a vacancy for any cause, a new member shall be appointed in the same manner as the person he replaces. A person so appointed shall serve out the unexpired portion of the term of the person he replaces.

(2) The successor for a commission member whose term has expired shall be appointed in the same manner used to appoint the commission member he succeeds.

(3) A member of a public safety commission is eligible for reappointment to the commission at the end of his term.

(4) Members of a public safety commission shall receive no compensation but may receive actual and necessary travel and other expenses incurred in the performance of official duties. Such costs shall be borne by the county if the commission member is appointed by the board of county commissioners, by the city or town by which appointed, or borne equally by the county and city or town if jointly appointed.

**History:** En. 69-2726.2 by Sec. 3, Ch. 146, L. 1975.

**Compiler's Notes**

This section was renumbered by the Legislative Council; see note following sec. 16-2726.1.

**16-2726.3. Organization—selection and duties of chairman—meetings.** (1) Not later than sixty (60) days after the commission is authorized, the members of the commission shall meet and organize at a time which shall be set by the board of county commissioners and the legislative body of the city or town.

(2) At the first meeting of the commission, the member jointly appointed by the board of county commissioners and the legislative body of the city or town shall be designated by the commission to serve as temporary chairman. As its first official act, the commission members shall select a chairman and vice-chairman from their own number.



(3) The chairman of the commission shall preside over all meetings and hearings of the commission. In the absence or inability of the chairman, the vice-chairman shall preside over all meetings and hearings of the commission.

(4) Meetings of the commission shall be held upon call of the chairman, the vice-chairman in the absence or inability of the chairman, or a majority of the commission members. Hearings in all cases involving employee discharge or termination shall be held upon request of any employee so discharged or terminated.

**History:** En. 69-2726.3 by Sec. 4, Ch. 146, L. 1975.

**Compiler's Notes**

This section was renumbered by the Legislative Council; see note following sec. 16-2726.1.

**16-2726.4. Application to existing commissions.** Upon its passage and approval, this act shall apply to all commissions that supervise a department of public safety. The members of all such commissions shall draw lots to determine the length of their respective terms.

**History:** En. 69-2726.4 by Sec. 5, Ch. 146, L. 1975.

**Compiler's Notes**

This section was renumbered by the Legislative Council; see note following sec. 16-2726.1.

**16-2727. Sheriff as director—appointed or elected.** The director of the department of public safety shall be the sheriff who may be elected, or may be appointed by the public safety commission if the form of county government provides for an appointed sheriff. A director so appointed shall receive a majority of the votes of the public safety commission members voting on the question of his appointment.

**History:** En. Sec. 2, Ch. 347, L. 1973; amd. Sec. 6, Ch. 146, L. 1975.

**Amendments**

The 1975 amendment inserted "of public safety" after "department" in the first sentence; inserted "public safety" before

"commission" in the first sentence; substituted "if the form of county government provides for an appointed sheriff" for "in the event of municipal county government" at the end of the first sentence; and added the second sentence.

**16-2728. Powers and duties of officers, patrolmen and director.** Officers and patrolmen of the city or town police department and deputies of the county sheriffs' office shall be subordinate to the director and shall have the power and perform the duties conferred on and required of police officers and patrolmen in cities and towns and of sheriffs' deputies in counties, as required by state law and municipal ordinance. The director shall have the powers and perform the duties conferred on and required of sheriffs, police officers, and chiefs of police except in cases involving the discharge or termination of employment of subordinate employees.

(1) "Employee" or "subordinate employee" means, but is not limited to, any officer or patrolman of the city or town police department, deputy of the county sheriff's office, or any person employed as a clerk, dispatcher, or secretary by the department of public safety or so employed by the city or town police department or the county sheriff's office prior to the establishment of the department of safety.



(2) In all cases involving the discharge or the termination of employment of any subordinate employee by the director of the department of public safety, such employee is entitled to a full hearing as provided in this act, except that those employees covered under collective bargaining agreements as provided for in chapter 16 of Title 59, R. C. M. 1947, shall be entitled to use any grievance procedure provided for within the collective bargaining agreement.

**History:** En. Sec. 3, Ch. 347, L. 1973; amd. Sec. 7, Ch. 146, L. 1975.

**Amendments**

The 1975 amendment added "and chiefs of police except in cases involving the dis-

charge or termination of employment of subordinate employees" to the end of the second sentence of the first paragraph; added subdivisions (1) and (2); and made minor changes in phraseology and punctuation.

**16-2728.1. Hearing procedure for an employee discharged by an appointed director.** (1) A director appointed by the public safety commission shall at the time of the discharge or termination of the employment of any subordinate employee provide such employee a written statement subscribed and sworn to by the director setting forth the cause or causes for the discharge or termination of employment.

(2) Within thirty (30) days from the date of discharge or termination of his employment such employee may make application to the public safety commission for a hearing before the commission on the charges resulting in the employee's discharge or termination of employment. Such employee may be present at the hearing in person and may be represented by legal counsel. The commission shall keep a record of the proceedings in such cases and the records shall be a matter of public record. For the purpose of keeping a record of the proceedings in such a case, the department of public safety shall provide the commission with a person qualified to keep a record of the proceedings. Such person may be an employee of the department.

(3) The commission shall, after the conclusion of the hearing, decide whether the charges resulting in the employee's discharge or termination of employment have been proven.

(4) The commission shall have the power in all cases, wherein a majority of the commission members find the charges not proven, to reinstate any employee to the same position he held and at the same salary he received prior to discharge or termination of employment.

(5) In all cases wherein a majority of the commission members find the charges proven, the employee may appeal the decision of the commission to the district court of the county wherein the employee was employed. Such appeal must be initiated within sixty (60) days of the ruling of the commission.

**History:** En. 16-2728.1 by Sec. 8, Ch. 146, L. 1975.

**16-2728.2. Hearing procedure for an employee discharged by an elected director.** (1) A director who is elected shall at the time of the discharge or termination of employment of any subordinate employee be required to follow the procedures of notice required of an appointed director.

(2) Any employee discharged or terminated by an elected director is entitled to a hearing before the public safety commission in the manner provided in section 8 [16-2728.1] of this act.

(3) The public safety commission shall, after the conclusion of the hearing, decide whether the charges resulting in the employee's discharge or termination have been proven.

(4) The commission may request that the elected director reinstate an employee in all cases wherein a majority of the commission members find the charges not proven. The director may deny such a request for reinstatement but shall provide the commission with a written statement subscribed and sworn to by the director setting forth the reason or reasons for the refusal to reinstate the discharged or terminated employee. Such written statement shall become a part of the records of the proceedings of the commission and shall be open to public scrutiny.

(5) In all cases wherein the commission finds the charges not proven, but the elected director refuses to reinstate the discharged or terminated employee, or cases wherein a majority of the commission members find the charges proven, the employee may appeal the decision in the manner provided in section 8 [16-2728.1] of this act.

History: En. 16-2728.2 by Sec. 9, Ch. 146, L. 1975.

**16-2728.3. Reinstatement of a discharged employee who prevails in district court.** In the event that an employee prevails in an appeal to the district court he shall be entitled to be reinstated to the same position he held and at the same salary he received prior to his discharge or termination by the director.

History: En. 16-2728.3 by Sec. 10, Ch. 146, L. 1975.

**16-2729. Salaries.** The provisions of section 25-605, R. C. M. 1947, notwithstanding, the salaries of the director and employees of the department of public safety shall be established by the public safety commission and shall be paid by the city or town with the board of county commissioners. Said salaries in any event shall not be less than that specified in section 25-605, R. C. M. 1947.

History: En. Sec. 4, Ch. 347, L. 1973; department of public safety" for "department of public law enforcement" in the first sentence; inserted "public safety" before "commission" in the first sentence; and made a minor change in phraseology.

#### Amendments

The 1975 amendment substituted "de-

**16-2730. Officers' status as deputy sheriff.** For the purpose of serving and making return on all criminal and civil process, executing judgments, decrees and orders of court and making sales thereunder and returns thereof, the director shall be known and designated as "sheriff of the city and county of ....." and each police officer, patrolman and deputy sheriff shall be known and designated as deputy sheriff.

History: En. Sec. 5, Ch. 347, L. 1973.

#### Separability Clause

Section 6 of Ch. 347, Laws 1973 read "The provisions of this act are severable,

and if any part or provision thereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act."

**16-2731 to 16-2733. Repealed.****Repeal**

Sections 16-2731 to 16-2733 (Secs. 1 to 3, Ch. 482, L. 1973), relating to liability

insurance for sheriff's department, were repealed by Sec. 9, Ch. 234, Laws 1977.

**CHAPTER 28—COUNTY JAILS****Section**

16-2802.1. County jails—common jails among counties.

16-2803. County jails, by whom kept and for what used.

16-2808. Provision and agreement for use of county jails for federal prisoners.

16-2818. Sheriff to receive all persons duly committed—payment for highway patrol prisoners—medical expense.

**16-2801, 16-2802. (12466, 12467) Repealed.****Repeal**

Sections 16-2801, 16-2802 (Secs. 3020, 3021, Pen. C. 1895), requiring a jail in each county and authorizing additional

jails, were repealed by Sec. 3, Ch. 193, Laws 1973. For new law see secs. 16-2802.1 and 16-2803.

**16-2802.1. County jails—common jails among counties.** A jail shall be built or provided and kept in good repair at the expense of the county in each county, except that whenever in the discretion of the commissioners of two or more counties, it is necessary or desirable to build, provide or utilize a common jail, they may do so in any city or town located within one of the counties so concerned. Such common jail shall be built or provided and kept in good repair at the expense of the counties concerned on a basis as the commissioners of the counties shall agree.

**History:** En. 16-2802.1 by Sec. 1, Ch. 193, L. 1973.

**Title of Act**

An act amending section 16-2803, R. C. M. 1947; providing for common jails among counties with operation and maintenance costs to be prorated among the

using counties; eliminating the requirement that there be a jail in each county seat; eliminating statutory limitation of one thousand dollars (\$1,000) which counties may spend on a common jail; and repealing sections 16-2801 and 16-2802, R. C. M. 1947.

**16-2803. (12468) County jails, by whom kept and for what used.** The common jails in the several counties of this state are kept by the sheriffs of the counties in which they are respectively situated. In the case of more than one county utilizing a common jail as provided in the preceding section, such jail shall be kept by the sheriffs of the counties utilizing the same on a basis as the sheriffs so utilizing the common jail shall agree. The common jails are used as follows:

1 to 4. \* \* \* [Same as parent volume.]

**History:** En. Sec. 3022, Pen. C. 1895; re-en. Sec. 9759, Rev. C. 1907; re-en. Sec. 12468, R. C. M. 1921; amd. Sec. 2, Ch. 193, L. 1973. Cal. Pen. C. Sec. 1597.

and sentence and the clause immediately preceding the numbered paragraphs.

**Repealing Clause**

Section 3 of Ch. 193, Laws 1973 read "Sections 16-2801 and 16-2802, R. C. M. 1947, are repealed."

**Amendments**

The 1973 amendment inserted the sec-

**16-2808. (12472.2) Provision and agreement for use of county jails for federal prisoners.** Provision and agreement for the use of said jails and



the support and subsistence of such federal prisoners shall first be made by the United States through or by the proper officer or officers, with the board of county commissioners of the county wherein such prisoners are to be confined, such agreement to be in writing and contain a provision that the United States shall, upon claim presented for the county by its county clerk and recorder, pay into the county treasury of the county the sum of five dollars (\$5) per day for each and every prisoner held in the county jail upon order or commitment of the United States government or any department or officer thereof.

**History:** En. Sec. 2, Ch. 120, L. 1923; amd. Sec. 1, Ch. 34, L. 1931; amd. Sec. 1, Ch. 253, L. 1969; amd. Sec. 1, Ch. 420, L. 1971.

#### Amendments

The 1969 amendment increased the per diem payment for holding federal prisoners in county jails from \$1.00 to \$5.00;

and increased the payment by the county to the sheriff from 75¢ to \$2.50 per day.

The 1971 amendment deleted a second sentence reading, "The sheriff of the county, who has custody of such prisoners, shall be paid by the county for their support and subsistence at the rate of two dollars and fifty cents (\$2.50) per day, per prisoner."

**16-2818. (12482) Sheriff to receive all persons duly committed—payment for highway patrol prisoners—medical expense.** The sheriff must receive all persons committed to jail by competent authority, and provide them with necessary food, clothing and bedding, for which he shall submit claims for the actual expenses incurred to the board of county commissioners for their determination, and, except as provided in the next section, to be paid out of the county treasury. In the event said person is committed to jail by the highway patrol bureau, department of justice, the state of Montana shall upon claim presented for the county by the clerk and recorder pay into the county treasury of the county the actual expenses incurred or the sum of five dollars (\$5) per day, whichever is less, for each and every prisoner held in the county jail upon order or commitment of the highway patrol bureau or any department or officer thereof. For the purposes of this act, a day shall be defined as a twenty-four (24) hour period or portion thereof, beginning with the time of incarceration. Such claims upon the highway patrol bureau, department of justice, shall be paid to the various counties out of funds appropriated for that purpose. If in the opinion of the sheriff any prisoner, while detained, requires medication, medical services or hospitalization, the expense of the same shall be borne by the agency or authority at whose instance the prisoner is detained when the agency or authority is not the county wherein the prisoner is being detained. The county attorney shall initiate proceedings to collect any charges arising from such medical services or hospitalization for the prisoner involved if it is determined the prisoner is financially able to pay.

**History:** En. Sec. 3036, Pen. C. 1895; re-en. Sec. 9773, Rev. C. 1907; re-en. Sec. 12482, R.C.M. 1921; amd. Sec. 1, Ch. 179, L. 1965; amd. Sec. 1, Ch. 203, L. 1967; amd. Sec. 2, Ch. 420, L. 1971; amd. Sec. 1, Ch. 435, L. 1973. Cal. Pen. C. Sec. 1611.

#### Amendments

The 1971 amendment substituted "sub-

mit claims for the actual expenses incurred to the county commissioners for their determination" for "be allowed a reasonable compensation, to be determined by the board of county commissioners" in the first sentence; and made a minor change in punctuation.

The 1973 amendment inserted the second and third sentences.

## DECISIONS UNDER FORMER LAW

**Accounting to Commissioners**

Sheriff has no clear legal duty to provide board of county commissioners with detailed itemized accounting of county

funds received for furnishing board to prisoners of county jail. State ex rel. Lucier v. Murphy, 156 M 186, 478 P 2d 273. (Decision prior to 1971 amendment of this section.)

**16-2823. (12487) Duty of sheriff.****Board for County Prisoners**

Sheriff has no clear legal duty to provide board of county commissioners with detailed itemized accounting of county funds received for furnishing board to

prisoners of county jail. State ex rel. Lucier v. Murphy, 156 M 186, 478 P 2d 273. (Decision prior to 1971 amendment of section 16-2818.)

## CHAPTER 29—COUNTY CLERK

**Section**

16-2902. What to be recorded.

16-2905. Indexes to be kept.

16-2924. Annual report of county clerk.

16-2927. County clerks to record certificates of discharge.

**16-2902. (4796) What to be recorded.** He must, upon payment of his fees for the same, record, or photograph, or correctly copy, separately, in large and well-bound, or to be bound, separate books, either in a fair hand or by printing or by typewriting, or by photographic process, or by the use of prepared blank forms:

1. Deeds, grants, transfers, contracts to sell or convey real estate and mortgages of real estate, releases of mortgages, powers of attorney to convey real estate, and leases which have been acknowledged or proved, and abstracts of such instruments which have been acknowledged or proved;

2 to 5. \* \* \* [Same as parent volume.]

6. Instruments describing or relating to the individual property of married persons, and sole trader judgments;

7 to 15. \* \* \* [Same as parent volume.]

Whenever the laws of the state of Montana require or permit any instrument to be recorded, such recording may be made in the manner or by any of the processes hereinbefore prescribed.

**History:** En. Sec. 4411, Pol. C. 1895; re-en. Sec. 3032, Rev. C. 1907; amd. Sec. 1, Ch. 68, L. 1917; re-en. Sec. 4796, R.C.M. 1921; amd. Sec. 1, Ch. 24, L. 1945; amd. Sec. 1, Ch. 218, L. 1971; amd. Sec. 1, Ch. 199, L. 1975; amd. Sec. 19, Ch. 293, L. 1975. Cal. Pol. C. Sec. 4235.

tracts of such instruments which have been acknowledged or proved" at the end of subdivision 1.

Chapter 199, Laws of 1975, appears to have made no change in the section.

Chapter 293, Laws of 1975, substituted "individual property" for "separate property" in subdivision 6; and substituted "married persons" for "married women" in subdivision 6.

**Amendments**

The 1971 amendment added "and ab-

**16-2905. (4799) Indexes to be kept.** Every county clerk, as ex officio recorder, must keep:

1 to 19. \* \* \* [Same as parent volume.]

20. An index of the individual property of married persons and sole trader judgments labeled "Individual property of married persons and

sole traders," each page divided into five columns, headed respectively: "Names of married persons," "Names of their spouses," "Nature of instruments recorded," "When recorded," "Where recorded";

21 to 26. \* \* \* [Same as parent volume.]

27. An index to financing statements as provided in Part 4 of the Uniform Commercial Code—Secured Transactions;

28. An index to filed subdivision plats containing number of lots, number of acres, filing date, and the location of the quarter section of each subdivision;

29. A miscellaneous index, in which must be indexed papers not hereinbefore stated.

History: En. Sec. 4412, Pol. C. 1895; re-en. Sec. 3033, Rev. C. 1907; re-en. Sec. 4799, R. C. M. 1921; amd. Sec. 11-111, Ch. 264, L. 1963; amd. Sec. 2, Ch. 199, L. 1975; amd. Sec. 20, Ch. 293, L. 1975. Cal. Pol. C. Sec. 4236.

#### Compiler's Notes

This section was amended twice in 1975, once by Ch. 199 and once by Ch. 293. Neither amendatory act mentioned nor included the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Section 3 of Ch. 199, Laws 1975 read "Notwithstanding section 43-517, the duty imposed upon the county clerks by this act is such that related costs are incurred as a part of the clerk's normal operating procedures and does not necessitate a new means of financing."

#### Amendments

Chapter 199, Laws of 1975, inserted subdivision (28) and redesignated former subdivision (28) as (29).

Chapter 293, Laws of 1975, substituted "individual property" for "separate property," "married persons" for "married women," and "spouses" for "husbands" in subdivision (20).

**16-2924. (4814) Annual report of county clerk.** Within forty days after the close of each fiscal year, the county clerk shall make out and present to the board of county commissioners and the department of community affairs a complete statement of the financial condition of the county. The statement shall be made out on the form designated by the department of community affairs and must show:

(1) A detailed description of all of the resources and liabilities of the county and the book value of them;

(2) The amount of moneys received showing the source of that revenue;

(3) The amount of moneys disbursed, with the purpose of disbursement;

(4) The operation of each of the cash and warrant accounts, showing the balance at the beginning of the year, the credits, the debits, and the balance at the end of the year;

(5) The assessed valuation of the real and personal property of the county, the rate of taxation, the amount of taxes delinquent for the preceding years, and such other items the department of community affairs may prescribe.

History: Ap. p. Sec. 778, 5th Div. Comp. Stat. 1887; amd. Sec. 4294, Pol. C. 1895; re-en. Sec. 2953, Rev. C. 1907; re-en. Sec. 4814, R. C. M. 1921; amd. Sec. 1, Ch. 2, L. 1925; amd. Sec. 1, Ch. 106, L. 1927; amd.

Sec. 72, Ch. 348, L. 1974; amd. Sec. 31, Ch. 213, L. 1975.

#### Amendments

The 1974 amendment substituted "de-



partment of intergovernmental relations" in the preliminary paragraph and in subdivision (5) for "state examiner"; and made minor changes in punctuation and phraseology.

The 1975 amendment substituted "department of community affairs" in the preliminary paragraph and in subdivision (5) for "department of intergovernmental relations"; and made a minor change in punctuation.

### 16-2925. (4814.1) Repealed.

#### Repeal

Section 16-2925 (Sec. 2, Ch. 106, L. 1927), relating to withholding of the coun-

ty clerk's salary until the annual statement has been made, was repealed by Sec. 107, Ch. 348, Laws of 1974.

**16-2927. County clerks to record certificates of discharge.** It is the duty of the county clerk of any county of this state to record, without charge, in a book kept for that purpose, the certificate of discharge of an honorably discharged person, regardless of sex, who served with the United States forces.

**History:** En. Sec. 2, Ch. 211, L. 1921; re-en. Sec. 5654, R. C. M. 1921; amd. Sec. 1, Ch. 54, L. 1943; Sec. 77-801, R. C. M. 1947; amd. and redes. 16-2927 by Sec. 3, Ch. 94, L. 1974.

#### Amendments

The 1974 amendment renumbered this section; deleted "in any of its wars" from the end of the section; and made minor changes in phraseology.

## CHAPTER 30—CLERK OF THE DISTRICT COURT

### Section

16-3001. Duties and records to be kept.

**16-3001. (4815) Duties and records to be kept.** The clerk of the district court, in addition to the duties prescribed elsewhere, shall:

- (1) take charge of and safely keep or dispose of according to law all books, papers, and records which are filed or deposited in his office;
- (2) act as clerk of the district court and attend each term or session thereof and upon the judges at chambers when required;
- (3) issue all process and notices required to be issued;
- (4) enter all orders, judgments, and decrees proper to be entered;
- (5) keep in each court a register of action, as provided in 93-8707, which must state the names of the attorneys and all fees charged in each action;
- (6) keep for the district court two separate indexes, one labeled "general index—plaintiffs" and the other labeled "general index—defendants", which shall be in the form prescribed in 16-3003;
- (7) keep a minute book, which must contain the daily proceedings of court, may be signed by the clerk, and must be indexed in the names of both defendant and plaintiff;
- (8) keep a book called "record of probate proceedings", which must contain all the orders and proceedings of the district court sitting in probate matters and must be indexed in the names of the deceased person and the executor or administrator or the names of the guardian and the ward;
- (9) keep a book called the "probate record book", in which must be recorded all wills, bonds, letters of administration, letters testamentary,

and other papers as prescribed by law and which must be indexed in the same manner as the "record of probate proceedings";

(10) keep two books:

(a) the first book must be labeled "declaration of intention to become citizens of the United States" and must have entered in it in alphabetical order the names of all persons who from the organization of the court have declared their intention to become citizens of the United States with the date of such declaration;

(b) the second book must be labeled "naturalization—final papers" and must have entered in it in alphabetical order the names of all persons who have been admitted as citizens of the United States by the court of which he is clerk and, in a separate column opposite each name, the country of which the person was formerly a citizen or subject, the date of his admission, and the page of the minute book or book of record containing the order admitting him as a citizen;

(11) keep a book called "register of criminal actions", which must have a proper index and in which must be entered the title and number of the action with a memorandum of every paper filed, filed, and order or proceeding had therein, with the date thereof, and a memorandum of the name of every witness, the number of days he attended, and his witness fees;

(12) keep a book called "register of probate and guardianship proceedings", in which must be entered the name of the estate and the register number with a memorandum of every paper filed and order or proceeding had therein, with the date thereof, and a memorandum of the fees charged;

(13) keep a fee book in which must be shown, in an itemized form, all fees that he has received for any services rendered in his capacity as clerk;

(14) keep a book called "book of jurors' certificates", which must contain the blank certificates and stubs to be filled as provided in 25-405;

(15) keep a "witness book", which must contain blank certificates and stubs to be filled as provided in 25-406;

(16) keep a record of the attendance of all jurors and of witnesses in criminal actions and compute the mileage of each.

**History:** En. Sec. 1, Ch. 64, L. 1967; amd. Sec. 10, Ch. 344, L. 1977.

#### Amendments

The 1977 amendment divided the former subdivision 3 into subdivisions (3) to (5); substituted "93-8707" in subdivision (5) for "the code of civil procedure"; deleted "and a list of all the fees charged" from the end of subdivision (5); redesignated former subdivisions 4 to 10 as subdivisions (6) to (12); substituted "form prescribed in section 16-3003" in subdivision (6) for specific form instructions; deleted "as prescribed elsewhere in this

code" after "probate matters" in subdivision (8); substituted "guardian and the ward" for "guardian or ward" at the end of subdivision (8); deleted a former subdivision 11 reading "Keep an index book of persons sent to the insane asylum, as provided in section 38-208"; redesignated former subdivisions 12 to 15 as subdivisions (13) to (16); substituted "witness fees" for "legal fees" in subdivision (11); substituted "25-405" for "this code" in subdivision (14); substituted "25-406" for "this code" in subdivision (15); and made minor changes in phraseology, punctuation and style.

### CHAPTER 31—COUNTY ATTORNEY

#### Section

16-3106. Certain county attorneys prohibited from private practice of law.

16-3107. Qualifications.

16-3108. Certain deputies prohibited from private practice.

**16-3101. (4819) Duties of county attorney.****Power of Attorney General To Institute Actions in District Court**

Although county attorney may be ordered by attorney general to initiate a felony prosecution in a district court, at-

torney general has no power to initiate the action independent of the county attorney. *State ex rel. Woodahl v. District Court*, 159 M 112, 495 P 2d 182.

**16-3106. Certain county attorneys prohibited from private practice of law.** In each county with a population in excess of thirty thousand (30,000) the county attorney is prohibited from engaging in the private practice of law or sharing directly or indirectly in the profits of any private practice of law, except that he may represent himself and his immediate family.

**History:** En. 16-3106 by Sec. 1, Ch. 102, L. 1975.

**Title of Act**

An act making the position of county attorney in certain counties a full-time

position; setting the qualifications therefor; amending section 25-605, R. C. M. 1947, by providing a salary therefor; prohibiting certain deputies from engaging in the private practice of law; and providing an effective date.

**16-3107. Qualifications.** No person is eligible for the position of county attorney in counties which have a population in excess of thirty thousand (30,000) unless he is a citizen of the United States, who has resided in the state two (2) years immediately before taking office, and has been admitted to the practice of law for at least five (5) years prior to the date of election or appointment.

**History:** En. 16-3107 by Sec. 2, Ch. 102, L. 1975.

**16-3108. Certain deputies prohibited from private practice.** Any deputy county attorney in a county with a population in excess of thirty thousand (30,000) who is paid seventy per cent (70%) or more of the county attorney's salary is prohibited from engaging in the private practice of law or sharing directly or indirectly in the profits of any private practice of law, except as to those matters in which he has a direct interest.

**History:** En. 16-3108 by Sec. 4, Ch. 102, L. 1975.

**Effective Date**

Section 5 of Ch. 102, Laws 1975 read "The effective date of this act is July 1, 1975, provided that any county attorney

now serving in a county with a population in excess of thirty thousand (30,000) may elect to complete his present term of office at the salary as presently set by law and retain the right to engage in the private practice of law."

**CHAPTER 32—COUNTY AUDITOR****Section**

16-3203. Election—term—qualifications.  
16-3204. Oath.

**16-3203. (4825) Election—term—qualifications.** There may be elected in and for each county of the class named in the preceding section, some person to serve as county auditor of the county for which he shall be elected for the term of four (4) years, and until his successor shall be elected and



qualified, the term to begin on the first Monday in January succeeding his election. No person shall be eligible to the office of county auditor of any county within the state who shall not have arrived at the age of voting and who shall not have been for at least two (2) years next preceding his election, a bona fide resident of the county for which he shall be elected or appointed.

**History:** En. Sec. 2, p. 227, L. 1891; re-en. Sec. 4561, Pol. C. 1895; re-en. Sec. 3101, Rev. C. 1907; re-en. Sec. 4825, R.C.M. 1921; amd. Sec. 3, Ch. 423, L. 1971; amd. Sec. 10, Ch. 100, L. 1973; amd. Sec. 1, Ch. 187, L. 1973.

#### Compiler's Notes

This section was amended twice in 1973, once by Ch. 100 and once by Ch. 187. Neither amendatory act mentioned nor incorporated all the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

#### Amendments

The 1971 amendment substituted "age of

voting as required by the Montana constitution" in the second sentence for "age of twenty-one years"; and made minor changes in style.

Chapter 100, Laws of 1973, deleted "male" before "person to serve as county auditor" in the first sentence; and deleted "as required by the Montana Constitution" from the language substituted in the second sentence by the 1971 amendment.

Chapter 187, Laws of 1973, substituted "may" for "shall" at the beginning of the section; deleted a clause relating to the 1892 election from the first sentence; and deleted "male" before "person to serve" in the first sentence.

**16-3204. (4826) Oath.** Any person who shall be elected or appointed to the office of county auditor shall, before entering upon the duties of said office, take and subscribe such constitutional oath as is required of other county officers.

**History:** En. Sec. 3, p. 228, L. 1891; re-en. Sec. 4562, Pol. C. 1895; re-en. Sec. 3102, Rev. C. 1907; re-en. Sec. 4826, R. C. M. 1921; amd. Sec. 9, Ch. 68, L. 1967; amd. Sec. 3, Ch. 7, L. 1973.

constitutional oath" for "such an oath" near the end of the section.

#### Cross-References

Bonds of county officers and employees, sec. 6-203 et seq.

#### Amendments

The 1973 amendment substituted "such

### CHAPTER 34—COUNTY CORONER

#### Section

16-3401. Coroner to hold inquest.

16-3409. Inquest in case of prisoners in state prison.

**16-3401. (4848) Coroner to hold inquest.** The coroner must hold inquests, as provided in Title 95, chapter 8.

**History:** En. Sec. 4490, Pol. C. 1895; re-en. Sec. 3066, Rev. C. 1907; re-en. Sec. 4848, R. C. M. 1921; amd. Sec. 22, Ch. 530, L. 1977. Cal. Pol. C. Sec. 4285.

#### Amendments

The 1977 amendment substituted "Title 95, chapter 8" for "sections 94-201-1 to 94-201-12."

**16-3402. (4849) Repealed.**

#### Repeal

Section 16-3402 (Sec. 4491, Pol C. 1895),

relating to burial of unclaimed bodies, was repealed by Sec. 27, Ch. 530, Laws 1977.

**16-3403. (4850) Repealed.**

<p><b>Repeal</b> Section 16-3403 (Sec. 4492, Pol C. 1895), relating to disposition of property found</p>	<p>at inquest, was repealed by Sec. 64, Ch. 184, Laws 1977 and by Sec. 27, Ch. 530, Laws 1977.</p>
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**16-3409. (4856) Inquest in case of prisoners in state prison.** When a prisoner confined in the state prison shall die, the coroner of the county wherein the state prison is located may hold an inquest as provided in Title 95, chapter 8.

<p><b>History:</b> En. Sec. 1, Ch. 122, L. 1909; re-en. Sec. 4856, R. C. M. 1921; amd. Sec. 23, Ch. 530, L. 1977.</p>	<p><b>Amendments</b> The 1977 amendment substituted "Title 95, chapter 8" for "sections 94-201-1 to 94-201-12."</p>
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## CHAPTER 36—CONSTABLE AND JUSTICES OF THE PEACE

### Section

- 16-3601. Constables to attend justices' courts.
- 16-3603. Governed by law prescribing sheriffs' duties.
- 16-3604. Duties of justices.
- 16-3605. Justices not to practice law.
- 16-3607. Justice or constable not to purchase judgment.

**16-3601. (4859) Constables to attend justices' courts.** Constables must attend the courts of justices of the peace within their counties whenever so required, and execute, serve, and return all process and notices directed or delivered to them by a justice of the peace of such county, or by any competent authority.

<p><b>History:</b> En. Sec. 4550, Pol. C. 1895; re-en. Sec. 3096, Rev. C. 1907; re-en. Sec. 4859, R. C. M. 1921; amd. Sec. 4, Ch. 253, L. 1975. Cal. Pol. C. Sec. 4314.</p>	<p><b>Amendments</b> The 1975 amendment substituted "counties" for "townships"; and deleted "within their counties" before "execute."</p>
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**16-3603. (4861) Governed by law prescribing sheriffs' duties.** All the provisions of 16-2701 through 16-2722, except subsections (4), (5), and (6) of 16-2702, apply to constables and govern their powers, duties, and liabilities.

<p><b>History:</b> En. Sec. 4552, Pol. C. 1895; re-en. Sec. 3099, Rev. C. 1907; re-en. Sec. 4862, R. C. M. 1921; amd. Sec. 11, Ch. 344, L. 1977. Cal. Pol. C. Sec. 4316.</p>	<p>2701 through 16-2722, except subsections (4), (5), and (6), of 16-2702" for "sections 16-2701 to 16-2722 inclusive of this code, except the fourth and sixth subdivisions of section 16-2702"; and made a minor change in punctuation.</p>
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### Amendments

The 1977 amendment substituted "16-

**16-3604. (4862) Duties of justices.** Justices of the peace must perform such duties as are prescribed in 93-6601 through 93-7714 and any other duties prescribed by law.

<p><b>History:</b> En. Sec. 4552, Pol. C. 1895; re-en. Sec. 3099, Rev. C. 1907; re-en. Sec. 4862, R. C. M. 1921; amd. Sec. 12, Ch. 344, L. 1977. Cal. Pol. C. Sec. 4316.</p>	<p><b>Amendments</b> The 1977 amendment substituted "through" for "to"; and made minor changes in phraseology.</p>
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**16-3605. (4863) Justices not to practice law.** (1) Except as provided in subsection (2), a justice of the peace may not:

- (a) practice law;

(b) draw contracts, conveyances, or other legal instruments or documents;

(c) take any claim or bill for collection or act as a collection agent in any sense; or

(d) perform any legal duties other than those prescribed by law as his official duties in the conduct of cases and proceedings in his court.

(2) A justice of the peace who is an attorney and who is admitted to practice law before the supreme court of the state of Montana may engage in the general practice of law and practice law in all courts in the state of Montana, except that such a justice, his law partner or associate, or a member, associate, or employee of a firm of which he is a member may not represent a party involved in a case which is filed or tried in his court or in any justice court located in the same county as his court or which is appealed from such a court.

(3) A justice of the peace who violates any of the provisions of this section is guilty of malfeasance in office and shall be removed from his office of justice of the peace and thereafter be disqualified from holding such office.

**History:** En. Sec. 3, p. 92, L. 1901; re-en. Sec. 3114, Rev. C. 1907; re-en. Sec. 4863, R. C. M. 1921; amd. Sec. 1, Ch. 228, L. 1959; amd. Sec. 13, Ch. 344, L. 1977.

#### Amendments

The 1977 amendment divided the former first paragraph into subsections (1) and (3); designated the former second paragraph as subsection (2); substituted

"Except as provided in subsection (2), a justice of the peace may not" at the beginning of subsection (1) for "No justice of the peace shall"; inserted the subdivision designations (a) to (d) in subsection (1); substituted "county" for "township" near the end of subsection (2); and made minor changes in phraseology and punctuation.

### 16-3606. Repealed.

#### Repeal

Section 16-3606 (Sec. 1, Ch. 75, L. 1937), relating to the furnishing of forms, quar-

ters and equipment to justices of the peace, was repealed by Sec. 60, Ch. 344, Laws 1977.

**16-3607. (10860) Justice or constable not to purchase judgment. (1)** A justice of the peace may not purchase or be interested in the purchase of any judgment or part thereof on his docket or on any docket in his possession. A constable may not purchase or be interested in the purchase of any judgment or part thereof on the docket of a justice of the peace of the county of which he is a constable or on a docket in the possession of such a justice.

(2) Violation of subsection (1) is a misdemeanor.

**History:** En. Sec. 113, p. 205, Bannack Stat.; re-en. Sec. 126, p. 298, Cod. Stat. 1871; re-en. Sec. 126, 4th Div. Rev. Stat. 1879; re-en. Sec. 135, 4th Div. Comp. Stat. 1887; amd. Sec. 197, Pen. C. 1895; re-en. Sec. 8216, Rev. C. 1907; re-en. Sec. 10860, R. C. M. 1921; Sec. 94-808, R. C. M. 1947; redcs. 16-3607 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 5, Ch. 253, L. 1975; amd. Sec. 14, Ch. 344, L. 1977. Cal. Pen. C. Sec. 97.

#### Amendments

The 1975 amendment substituted "county" for "township."

The 1977 amendment rewrote this section which read "Every justice of the peace, or constable of the same county, who purchases or is interested in the purchase of any judgment, or part thereof, on the docket of, or on any docket in the possession of, such justice, is guilty of a misdemeanor."



## CHAPTER 37—DEPUTY COUNTY OFFICERS

Section 16-3705. Qualifications of deputy sheriffs, marshals and policemen.

16-3705.1. Work week of any deputy sheriff of a first and second class county.

16-3706. Maximum number of deputy treasurers, auditors and county attorneys.

**16-3703. (4877) Repealed.**

Repeal of Section 16-3703, relating to deputy sheriffs, marshals, and policemen, was repealed by Sec. 113, Ch. 391, Laws 1973.

**16-3705. (4879) Qualifications of deputy sheriffs, marshals and policemen.** (1) No sheriff of a county, mayor of a city, or other persons authorized by law to appoint special deputies, marshals, or policemen in this state to preserve the public peace and prevent or quell public disturbance, shall hereafter appoint as such special deputies, marshals, or policemen any person who shall not have resided continuously in this state for a period of one year at least, and in the county where such appointment is made for the period of at least six (6) months prior to the date of said appointment, and who does not meet the minimum qualifying standards for employment promulgated by the board of crime control; provided, that the provisions of this section shall not apply in cases of such officers summoning a posse forthwith to quell public disturbance or domestic violence. And provided further, that the person or body authorized by law to appoint special deputies, marshals, or policemen may, in its discretion, waive residency requirements.

(2) No sheriff shall employ as a deputy any individual who does not possess all the following qualifications:

(a) to (e) \* \* \* [Same as parent volume.]

Subsection (2) of this section shall not be applicable to any deputy sheriff whose term of employment commenced prior to the effective date of this act.

(3) Any person whose term of employment as a deputy sheriff commences subsequent to the effective date of this act shall serve a one-year probationary period and that during this one-year period the employment of any such deputy may be terminated by the sheriff with or without cause and without recourse to the sheriff under the terms of this act.

(4) It shall be the duty of the sheriff to cause all deputies whose term of employment commenced subsequent to the effective date of this act to attend that academy provided for by chapter 52, Title 75, R.C.M. 1947, except that the sheriff may accept reasonable delays in attendance at the academy as shown by the deputy's declared intention of attending. Failure to satisfactorily complete the course offered by said academy shall be deemed cause to terminate a deputy's employment.

(5) Any deputy sheriff now employed or that may hereafter be employed shall continue in service until relieved of his employment in the manner hereinafter provided and only for one or more of the following specified causes:

(a) to (e) \* \* \* [Same as parent volume.]

(f) gross inefficiency in the performance of official duties.

(6) When a sheriff terminates the employment of a deputy he shall at the time of termination cause to be served upon said deputy a statement in writing subscribed and sworn to by the sheriff setting forth the cause or causes for the discharge or termination of the deputy's employment.

(7) Any deputy sheriff whose employment is terminated from and after the effective date of this act, may within thirty (30) days from the date of the termination of his employment make application to the district court of the county wherein the deputy was employed for a hearing before the court, with or without jury, on the charges resulting in the deputy's termination of employment or discharge. In the event that a deputy prevails at the hearing he shall be entitled to be reinstated as a deputy sheriff at the same salary he received prior to his discharge or termination of employment and he shall also be entitled to any rights that might have accrued to his benefit prior to his discharge or termination of employment, including that salary which he would have received but for the termination.

**History:** En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec. 1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973; amd. Sec. 2, Ch. 188, L. 1975.

#### Amendments

Chapter 66, Laws of 1971, added the proviso at the end of subsection (1).

Chapter 81, Laws of 1971, deleted from subsections (2) through (7) phrases restricting the application of those subsections to first, second and third class counties.

The 1973 amendment inserted "and who does not meet the minimum qualifying standards for employment promulgated by the board of crime control" immediately before the proviso to the first sentence of subdivision (1).

The 1975 amendment deleted a subdivi-

sion (5)(g) which read: "participation in any political campaign as a candidate or the solicitation of political support for any candidate for public office"; and made a minor change in punctuation.

#### Discharge Justified

Where county sheriff ordered deputy to turn over "any criminal files that you are presently working, or involved with" to a specified officer for the purpose of creating a centralized filing system, and the deputy withheld certain files, he could properly be dismissed under this section for "willful disobedience" to the sheriff's order, because the evidence supported findings that he willfully retained the files and that he had ample opportunity to clear up any misunderstanding as to the meaning of the directive by asking the sheriff what was meant. *Erickson v. Fisher*, — M —, 554 P 2d 1336.

**16-3705.1. Work week of any deputy sheriff of a first and second class county.** Any person employed as a deputy sheriff of a first and second class county shall not be forced to work in excess of forty (40) hours per week, except in case of an emergency and shall be entitled to two (2) days off in each seven (7) day period.

**History:** En. 16-3705.1 by Sec. 1, Ch. 329, L. 1973.

#### Title of Act

An act relating to the work week of deputy sheriffs of first class and second class counties.

**16-3706. (4880) Maximum number of deputy treasurers, auditors and county attorneys.** The whole number of deputies allowed the county treasurer must not exceed in counties of the first class, two; in counties of all other classes, one; provided, that the board of county commissioners may al-

low such additional deputies as may be necessary during the months of November and December of each year. The whole number of deputies allowed to county auditors in counties of the first, second and third classes must not exceed one. The whole number of deputies allowed the county attorney in counties of the first and second classes must not exceed one chief deputy, and one deputy; and in all other counties such deputies as may be allowed by the board of county commissioners, not to exceed one chief deputy and one deputy.

**History:** En. Sec. 2, Ch. 75, L. 1905; re-en. Sec. 3128, Rev. C. 1907; re-en. Sec. 4880, R. C. M. 1921; amd. Sec. 1, Ch. 97, L. 1939; amd. Sec. 2, Ch. 87, L. 1943; amd. Sec. 7, Ch. 391, L. 1973.

#### Amendments

The 1973 amendment deleted the former second sentence, which authorized additional deputies during assessment time, in order to implement article VIII, section 3 of the 1972 constitution.

### CHAPTER 38—COUNTY CHARGES

#### Section

16-3802. Enumeration of county charges—limitation as to state prison cases.

**16-3802. (4952) Enumeration of county charges—limitation as to state prison cases.** (1) The following are county charges:

(a) Charges incurred against the county by virtue of any provision of this title.

(b) One-half of the salary of the county attorney, and all expenses necessarily incurred by him in criminal cases arising within the county.

(c) The salary and actual expenses for traveling when on official duty allowed by law to sheriffs, and the compensation allowed by law to constables for executing process on persons charged with criminal offenses.

(d) The board of prisoners confined in jail.

(e) The sums required by law to be paid to grand and trial jurors and witnesses in criminal cases.

(f) The accounts of the coroner of the county for such services as are provided by law.

(g) All charges and accounts for services rendered by any justice of the peace for services in the examination or trial of persons charged with crime as provided for by law.

(h) The necessary expenses incurred in the support of county hospitals and poor farms, and the indigent sick and the otherwise dependent poor whose support is chargeable to the county.

(i) The contingent expenses necessarily incurred for the use and benefit of the county.

(j) Every other sum directed by law to be raised for any county purpose under the direction of the board of county commissioners, or declared to be a county charge.

(2) Notwithstanding the preceding subsection, all costs of a criminal prosecution, including attorneys' fees, of an offense committed in the state prison are not charges against the county in which the state prison is located. Such costs shall be paid by the department of institutions.



**History:** En. Sec. 4681, Pol. C. 1895; re-en. Sec. 3199, Rev. C. 1907; re-en. Sec. 4952, R.C.M. 1921; amd. Sec. 3, Ch. 420, L. 1971; amd. Sec. 1, Ch. 72, L. 1975. Cal. Pol. C. Sec. 4344.

#### Amendments

The 1971 amendment deleted "and for the board of prisoners" after "official duty" in former subdivision 3, now subdivision (1)(c); inserted subdivision 4, now subdivision (1)(d); renumbered for-

mer subdivisions 4 to 9 as subdivisions 5 to 10, now subdivisions (1)(e) to (1)(j).

The 1975 amendment designated the initial sentence as subsection (1); redesignated former subdivisions 1 to 10 as subdivisions (1)(a) to (1)(j); and added subsection (2).

#### Repealing Clause

Section 4 of Ch. 420, Laws 1971 read "Sections 25-227 and 25-228, R. C. M. 1947, are repealed."

### CHAPTER 39—COUNTY MANAGER FORM OF GOVERNMENT

(Repealed—Section 23, Chapter 123, Laws of 1973)

#### 16-3901 to 16-3923. (4954.1 to 4954.23) Repealed.

##### Repeal

Sections 16-3901 to 16-3923 (Secs. 1 to 22, Ch. 109, L. 1931; Secs. 1 to 7, Ch. 56, L. 1933; Sec. 1, Ch. 72, L. 1943), relating to the county manager form of government, were repealed by Sec. 23, Ch. 123, Laws

1973. For new law, see secs. 16-5001 to 16-5019, especially section 16-5016. Chapter 391, Laws of 1973 purported to amend sections 16-3912 and 16-3916, but the amendments were void under section 43-515.

### CHAPTER 40—ABANDONMENT OF COUNTIES

#### Section

16-4010. Townships—how disposed of.

16-4019. Assessment of property.

16-4020. Disposal of property—leasing—sale.

**16-4010. Townships—how disposed of.** The townships of a county abandoned and abolished under this act shall be townships of the county to which the territory within such townships is attached until such time as they may be changed by the board of county commissioners of such county; provided that if a township of such abandoned county is divided and a part attached to one and a part attached to another adjoining county then the board of county commissioners of the county to which attached, until further order of such board, shall attach such territory to an adjoining township within such county.

**History:** En. Sec. 10, Ch. 105, L. 1937; amd. Sec. 6, Ch. 253, L. 1975.

#### Amendments

The 1975 amendment deleted "and the justices of the peace and constables in such townships shall continue to hold such offices for the terms for which they were

elected" after "commissioners of such county" before the proviso; and deleted from the end of the section "and the terms of office of the justices of the peace and constables within such divided township shall cease and terminate at twelve (12:00) o'clock midnight of the thirtieth day of June immediately following."

**16-4019. Assessment of property.** The county assessor of a county abandoned and abolished under the provisions of this act shall, within ten (10) days after it comes to exist deliver to the county assessor of each county to which any part of its territory had been attached and become a part of all assessment lists, reports, documents and instruments relating to, concerning, or in any way affecting the assessment during the then current assessment year of all taxable property within such portion

of such abandoned and abolished county, and it shall be the duty of the assessor of the county, to whom such assessment lists, reports, documents and instruments have been delivered by the assessor of the abandoned and abolished county, to complete all assessments and to fully assess, during the then current assessment year, all taxable property situated or located, on the first day of January of such year, within the boundaries of such part of such abandoned and abolished county, and each such county assessor shall, in all matters and things connected in any way with the making of such assessments, have, possess and exercise all of the powers and rights and shall perform all of the duties which the assessor of the abandoned and abolished county would, or could have had, possessed, exercised or performed if such county had not been abandoned and abolished. The county assessor of such abandoned and abolished county shall, until twelve o'clock (12:00) midnight of the thirtieth day of June when said county ceases to exist, aid and assist the county assessors of the counties to which any part of the territory so to be abandoned and abolished will be attached and made a part, in the listing and assessing of all taxable property situated or located within each of such counties to the end that all taxable property within the boundaries of such abandoned county will be fully assessed and taxed.

**History:** En. Sec. 19, Ch. 105, L. 1937; amd. Sec. 2, Ch. 388, L. 1975.

assessment date specified in the first sentence from the first Monday of March to the first day of January.

#### **Amendments**

The 1975 amendment changed the as-

**16-4020. Disposal of property—leasing—sale.** (1) Each county to which any part of an abandoned and abolished county is attached becomes the owner under the provisions of this act of the real and tangible personal property of the abandoned and abolished county and may use all of this property for county purposes, may lease any of this real estate, or may sell any of the real estate or personal property.

(2) No personal property having a value in excess of \$100 may be sold unless it has been appraised within 1 year immediately prior to the date of sale by three taxpayers who reside within the territory of the abandoned and abolished county and who were appointed by the judge of the district court to which the county succeeding to the ownership of the property is attached, on petition of the board of county commissioners thereof. No sale of any personal property may be made except at public sale after notice or for a price less than 90% of the appraised value.

(3) No real property may be leased unless the board of county commissioners presents to the judge of the district court to which the county is attached a petition describing the real estate, with any improvements thereon, and setting forth the terms of the proposed lease. The petition shall be approved by the judge and filed in the office of the clerk of the county.

(4) No real estate may be sold by the board of county commissioners unless the property has been appraised within 1 year immediately prior to the date of sale by three taxpayers who reside within the territory of the abandoned and abolished county and who were appointed by the judge of



the district court to which the county is attached, on petition of the board of county commissioners of such county. Every sale of real estate shall be made at public sale, and notice shall be published once a week for at least two weeks immediately prior to the date for holding the same, in the official newspaper of the county, and no such real estate shall be sold for a price less than ninety per centum (90%) of the appraised value thereof.

(5) The full purchase price of any real estate so sold shall not be required to be made in one payment but the purchaser thereof may pay the same in four installments, the first of which shall be not less than twenty five per centum (25%) of the purchase price to be paid at the time of purchase, the remainder to be paid in three equal annual installments with interest thereon at not less than five per centum (5%) per annum. All real estate sold, with any improvements thereon, shall be subject to assessment and taxation annually to the purchaser or his successor in interest, at a value equal to the amount paid on the purchase price thereof until the purchase price is fully paid when such real estate shall be assessed at its full cash value, and any and all improvements placed on any such real estate, after its purchase, shall be subject to assessment and taxation at the full cash value thereof. Whenever the purchase price of any real estate is to be paid in installments the board of county commissioners shall enter into a contract with the purchaser thereof and such contract shall be recorded in the office of the county clerk. When payment in full has been made for any personal property or real estate the chairman of the board of county commissioners shall execute and deliver the proper bill of sale or deed to the purchaser or his successor in interest.

(6) The compensation of all appraisers appointed under the provisions of this section shall be fixed by the district judge appointing the same. Moneys received from leases or sales of real or personal property by any county other than the county designated in the petition for abandonment as the county to which the territory of the abandoned county is to be allocated shall be transmitted by the officers of such counties to the treasurer of the county designated in such petition for abandonment.

(7) All moneys received from the sales of personal property and from the leasing or sales of real estate, after deducting therefrom the amounts paid appraisers and for publishing notices of sale, shall be used and applied as follows:

(a) if there are any warrants issued and outstanding against any of the funds of the abandoned and abolished county, such moneys shall be applied in payment of such warrants and interest;

(b) if there are no warrants outstanding but district bonds have been issued under the provisions of subdivision (b) of 16-4016, then the moneys shall be deposited in the sinking and interest fund for district bonds;

(c) if there are no district bonds outstanding, then the moneys shall be deposited to the credit of the sinking and interest funds for bonds issued and outstanding when the abandoned and abolished county ceased to exist; and

(d) if there are no bonds outstanding, then the moneys shall be apportioned to all of the counties to which parts of the abandoned county were attached in the proportion which the taxable value of the property in each



part on January 1 immediately preceding the abandonment bears to the taxable value of all the property in the abandoned county. The apportioned moneys shall be deposited in the funds of each county as the boards of county commissioners of the counties may direct.

**History:** En. Sec. 20, Ch. 105, L. 1937; amd. Sec. 40, Ch. 566, L. 1977.

#### Amendments

The 1977 amendment divided former subsection (1) into subsections (1) and (2); redesignated former subsections (2) to (6) as (3) to (7); deleted "and made a

part" after "attached" in subsection (1); deleted "which approval shall be endorsed on such petition" after "judge" in the last sentence of subsection (3); substituted "taxable value" in two places in subsection (7)(d) for "assessed valuation"; and made minor changes in phraseology, punctuation and style.

## CHAPTER 41—COUNTY PLANNING AND ZONING DISTRICTS

### Section

16-4101. Planning and zoning districts—commission—creation.

**16-4101. Planning and zoning districts—commission—creation.** Whenever the public interest or convenience may require, and upon petition of sixty per centum (60%) of the freeholders affected thereby, the board of county commissioners is hereby authorized and empowered to order and create a planning and zoning district, and to appoint a commission consisting of five (5) members. The commission is to consist of the three (3) county commissioners, the county surveyor and the county assessor. Members of the commission shall serve without compensation other than reimbursement for duly authorized expenses, and shall be residents of the county in which they serve. The commission hereby is authorized to appoint necessary employees and fix their compensation with the approval of the board of county commissioners, to select a chairman to serve for one (1) year, to appoint a secretary who shall keep permanent and complete records of its proceedings, and to adopt rules governing the transaction of its business. The finances necessary for the transaction of the planning and zoning commission's business and to pay the expenses of the employees and justified expenses of the members of the board shall be paid from a levy of not to exceed one (1) mill on the taxable valuation of the real property within such district, provided that no such planning or zoning district may be created in an area which has been zoned by an incorporated city pursuant to section 11-2702 (2)

**History:** En. Sec. 1, Ch. 154, L. 1953; amd. Sec. 16, Ch. 273, L. 1971.

#### Amendments

The 1971 amendment added the proviso to the last sentence; and made a minor change in phraseology.

## 16-4102. Development pattern.

### Unreasonable and Discriminatory

Zoning of plaintiff's vacant lot and commercial building as part of a residential zone was unreasonable and discriminatory since the residential zone was contiguous with a commercial zone, contained only one residence surrounded by commercial properties, and the board of county commissioners gave no reason for failing to include the property in the commercial

zone. Alden v. Board of Zoning Commrs., — M —, 528 P 2d 1320.

Zoning of plaintiff's vacant lot and commercial building as part of a residential zone was unreasonable and discriminatory under zoning plan which did not permit the continuance of nonconforming uses. Alden v. Board of Zoning Commrs., — M —, 528 P 2d 1320.

**16-4103. Adoption of development district.**

**Variance and Nonconforming Use Dis-**  
**tinguished**

District court decision limiting nonconforming use for mobile homes to six trailers and court order to remove trailers exceeding that number did not make the

question of a variance res judicata, and landowners were entitled to a hearing on the merits on their petition for variance. *Wheeler v. Armstrong*, 159 M 392, 498 P 2d 300.

**CHAPTER 42—MOSQUITO CONTROL DISTRICTS****Section**

16-4201. **Definitions.**

16-4203. **Petition for district—hearing.**

16-4204. **Notice of hearing—mailing—publication—posting.**

16-4205. **Hearing—objections to district—creation of district.**

16-4206. **Enlargement of districts—petitions—objections.**

16-4207. **Mosquito control board—members—term—per diem.**

16-4209. **Department of health and environmental sciences—duties.**

16-4210. **Mosquito control fund.**

16-4211. **Dissolution of mosquito control district—hearing—notice—unexpended funds.**

**16-4201. Definitions.** In this act the expression:

(a) "Commissioners" means the board of county commissioners of any county;

(b) "District" means any mosquito control district created under the provisions of this act;

(c) "Board" means the mosquito control board for any district created under this act;

(d) "Mosquito" means any insect belonging to the family Culicidae of the order Diptera;

(e) "Mosquito pest" means any group of mosquitos which annoy man or his domestic animals or transmit any disease of man or of his domestic animals.

**History:** En. Sec. 1, Ch. 183, L. 1953;  
amd. Sec. 1, Ch. 337, L. 1973.

divisions (d), (e) and (f); relettered subdivisions (g) and (h) as (d) and (e); and made minor changes in style.

**Amendments**

The 1973 amendment deleted former sub-

**16-4203. Petition for district—hearing.** (1) When a petition signed by not less than twenty-five per cent (25%) of the qualified electors of the proposed district or twenty-five per cent (25%) of the owners of any property within the boundaries and whose names appear as such property owners upon the last completed assessment roll of the county in which the proposed district is situated, is presented to the board of commissioners of such county, asking for the creation of a mosquito control district, the commissioners shall set a day for the hearing of the same and order notice thereof to be given to all persons interested.

(2) Said petition shall set forth the boundaries of the proposed district and request that the property within the boundaries be organized into a mosquito control district. Such proposed district may include any incorporated or unincorporated city or town of the county.

(3) Sufficient funds to defray the cost of mailing, publication and posting of notice shall accompany the petition.

History: En. Sec. 3, Ch. 183, L. 1953; amd. Sec. 1, Ch. 226, L. 1955; amd. Sec. 2, Ch. 337, L. 1973; amd. Sec. 1, Ch. 399, L. 1975.

#### Amendments

The 1973 amendment substituted "owners of any property within the boundaries and whose names appear as such property owners upon the last completed assessment roll of the county in which the proposed district is situated" in the first sen-

tence for "resident freeholders of any proposed district"; added "and request that the property within the boundaries be organized into a mosquito control district" to the end of the second sentence; and made minor changes in phraseology.

The 1975 amendment divided this section into subsections (1) and (2); inserted "qualified electors of the proposed district or twenty-five per cent (25%) of the" in subsection (1); and added subsection (3).

**16-4204. Notice of hearing—mailing—publication—posting.** (1) The commissioners by resolution shall fix a time for a hearing upon said petition at not less than two (2) nor more than four (4) weeks from the time of presentation thereof.

(2) If addresses are known, the commissioners shall cause notice of the hearing to be mailed to each nonresident owner of taxable real and personal property within the proposed district.

(3) Commissioners shall cause notice to be posted in three (3) public places within the district, and where the district is partly in one county and partly in another county, notice must be posted in each county, but not in three (3) places in each county. The notice shall state that any qualified elector or owner of property lying within the boundaries of the proposed district may appear before the board at the time of hearing and show cause why the district should not be created, or may file his written objection to creation of the district at any time before the date of said hearing.

(4) The commissioners shall also cause notice to be given of the time and place of the hearing and methods of objection by publication in a newspaper within or nearest the district, and if the district is partly in one (1) county and partly in another county, in a newspaper in each county, if such newspaper exists. The publication must be for two (2) weekly issues.

(5) Posting and first publication shall be at least ten (10) days before the hearing.

History: En. Sec. 4, Ch. 183, L. 1953; amd. Sec. 3, Ch. 337, L. 1973; amd. Sec. 2, Ch. 399, L. 1975.

#### Amendments

The 1973 amendment deleted three sentences providing for notice to nonresident landowners by registered mail or publication; rearranged the remaining language; inserted new first and third sentences (now subsections (1) and (3)); and made minor changes in phraseology.

The 1975 amendment divided the section into subsections; inserted subsection (2); inserted "or owner of property lying" in the second sentence of subsection (3); deleted "in which the proposed district is situated" after "of the proposed district" in the second sentence of subsection (3); and deleted a sentence at the end of subsection (5) which read "Accompanying petition for creation of a district shall be sufficient funds to defray the cost of publication and posting."

**16-4205. Hearing—objections to district—creation of district.** At the time fixed for said hearing, the commissioners shall determine whether or not the petition complies with the requirements hereinbefore set forth, and whether or not the notice required herein has been published and posted as required. At such hearing, the board must hear all competent



and relevant testimony offered in support of or in opposition to said petition and creation of said district, and shall also consider the written objections to the creation of the district. Said hearing may be adjourned from time to time for determination of facts, but no adjournment shall exceed two (2) weeks in all from and after the date originally noticed and published for the hearing. At such a hearing or at any time following the first publication of notice of such hearing, until the time of said hearing, any qualified elector or an owner of property within the proposed district may file his written objections to the creation of the district. Such objections shall be delivered to the county clerk, who shall endorse thereon the date of its receipt by him. Upon such hearing, if the commissioners determine there has been compliance with all of the requirements herein set forth, they shall by an order, duly made and entered on their minutes, declare the district created, setting forth the name and boundaries of the district and the description of land contained therein, except, where, at the time of the hearing, the commissioners find that a geographical area desires exclusion from the area contained within the boundaries of the proposed district, the hearing may be adjourned to permit the commissioners to consult the department of health and environmental sciences to determine if it would be advisable to exclude the geographical area from the district. Upon reconvening, the commissioners shall define and establish such boundaries as are advisable. Provided,

(1) that if fifty-one per cent (51%) or more of the qualified electors or of the owners of property within the boundaries of the proposed district file their written objections to the creation of such district, the commissioners shall not proceed with the creation of such district;

(2) or, if, as the result of objections filed, the commissioners, in their discretion, determine the question in doubt whether or not the creation of a district is to the best interest of an area and the residents therein, the commissioners may cause the issue to be determined by referendum at the next regular election.

Before setting a time for hearing, the commissioners may cause a survey and study of the area sought to be included in such district to be made by competent personnel and may submit a report thereof to the department of health and environmental sciences for its review and recommendations.

**History:** En. Sec. 5, Ch. 183, L. 1953; amd. Sec. 4, Ch. 337, L. 1973; amd. Sec. 3, Ch. 399, L. 1975.

#### Amendments

The 1973 amendment inserted the first, second and third sentences; substituted "qualified elector" for "landowner" in the fourth sentence; substituted "determine there has been compliance with all of the requirements herein set forth" in the fifth sentence for "believe the creation of such a district to be in the best interest of such area and those resident therein"; inserted the exception at the end of the fifth sentence; inserted the

designation for paragraph (1); substituted "fifty-one per cent (51%) or more of the qualified electors" in paragraph (1) for "the owners of fifty-one per cent (51%) or more of the land"; inserted paragraph (2); substituted "department of health and environmental sciences" for "state mosquito advisory committee" in the final paragraph; and made minor changes in phraseology and style.

The 1975 amendment inserted "or an owner of property within the proposed district" in the fourth sentence; inserted "or of the owners of property" in paragraph (1); and made a minor change in style.

**16-4206. Enlargement of districts—petitions—objections.** Any such district at any time subsequent to its creation may be enlarged to include adjacent land upon the presentation to the board of county commissioners of a petition signed by the not less than twenty-five per cent (25%) of the electors within the adjacent land or twenty-five per cent (25%) of the owners of any property lying within the boundaries of the area proposed to be annexed to the district and whose names appear as such property owners upon the last completed assessment roll of the county in which the said proposed area is situated. If any such petition for enlargement of an existing district is presented, the board of county commissioners shall set a time for hearing thereon and shall cause notice thereof to be given in the manner provided by section 16-4204. If, upon such hearing, the commissioners believe it to be to the best interests of the area and those resident therein that such area be annexed to the district, they shall by an order duly made and entered on their minutes, declare the area in question to be annexed to the district, and such annexed area shall thenceforth be considered a part of such district for all purposes as thereof originally included therein. If fifty-one per cent (51%) or more of the qualified electors or of the property owners in the area proposed to be annexed to the district file their objection to the creation of such district, the commissioners shall not act on such petition. If, as a result of objections filed, the commissioners, in their discretion, determine the question in doubt whether or not the annexation of the area is to the best interest of the area and of the residents therein, the commissioners may cause the issue to be decided by referendum at the next regular election. If such additional area is added, such territory shall be subject to the tax authorized by this act together with the pre-existing area of the district. Such tax shall be uniform for the area added and the territory in the district as enlarged.

**History:** En. Sec. 6, Ch. 183, L. 1953; amd. Sec. 5, Ch. 337, L. 1973; amd. Sec. 4, Ch. 399, L. 1975.

#### **Amendments**

The 1973 amendment substituted "not less than twenty-five per cent (25%) of the owners of any property" in the first sentence for "owners of twenty-five per cent of the resident owned land"; inserted "and whose names appear as such property owners upon the last completed assessment roll of the county in which the said proposed area is situated" at the end of the first sentence; deleted "prior to the time of such hearing" at the beginning

of the fourth sentence; substituted "fifty-one per cent (51%) or more of the qualified electors" in the fourth sentence for "owners of fifty-one per cent (51%) or more of the land included"; added the fifth and sixth sentences (now the sixth and seventh sentences); and made minor changes in phraseology.

The 1975 amendment inserted "electors within the adjacent land or twenty-five per cent (25%) of the" in the first sentence; inserted "the property owners in" in the fourth sentence; inserted the fifth sentence; and made a minor change in phraseology.

**16-4207. Mosquito control board—members—term—per diem.** Upon the creation of any mosquito control district, the commissioners shall appoint a mosquito control board composed of not less than three (3) nor more than five (5) members, each of whom shall be an elector and property owner within the boundaries of the district and whose name appears as such property owner upon the last completed assessment roll of the county in which said district is situated. The terms of office for the first appointed



members shall be so arranged that they do not all expire at the same time, and for that purpose may be set for any length of time not more than three (3) years. Thereafter the terms of all members shall be three (3) years, the term of one (1) member expiring on the first day of January in each year. The board shall be a body corporate and shall act as such, and the members shall be public officers and they shall organize each year by choosing a chairman who shall be from among the appointed members, and a secretary. All such board members shall serve without pay, except that the appointed members shall receive per diem as allowed by state law for each day when the board is actually in session and their necessary mileage as provided by law. The health officer having jurisdiction in the proposed district, sanitarian or a member of his staff, and the county extension agent, if the county has any, or all such officers, shall be ex officio members of such board without vote.

History: En. Sec. 7, Ch. 183, L. 1953; amd. Sec. 6, Ch. 337, L. 1973; amd. Sec. 5, Ch. 399, L. 1975.

#### Amendments

The 1973 amendment inserted "resident" before "freeholder" in the first sentence; added "and whose name appears as such property owner upon the last completed assessment roll of the county in which said district is situated" to the end of the

first sentence; substituted "as allowed by state law" for "ten dollars (\$10.00)" after "per diem" in the fourth sentence; and made minor changes in style.

The 1975 amendment substituted "an elector and property owner" for "resident freeholder" in the first sentence; and changed the expiration date in the third sentence from the first day of July in each year to the first day of January.

### 16-4209. Department of health and environmental sciences—duties. (1)

It shall be the duty of the department of health and environmental sciences to advise the commissioners of any county relative to the creation of mosquito control districts within such county and upon request to advise the boards of such districts in connection with their control programs.

(2) Annually on or before the first (1st) day of February, the board of each district shall submit to the department of health and environmental sciences and the department of agriculture for their review and advice a written report of its operations for the preceding year and a written plan covering its control program for the ensuing year.

History: En. Sec. 9, Ch. 183, L. 1953; amd. Sec. 1, Ch. 2, L. 1969; amd. Sec. 7, Ch. 337, L. 1973.

#### Amendments

The 1969 amendment made minor changes in former subsection (a), which established a state mosquito control advisory committee; inserted "upon request" before "to advise" in the latter part of subsection (b), now subsection (1); substituted "the state entomologist and the state department of health" in subsection (c), now subsection (2), for "such com-

mittee"; and made a minor change in phraseology.

The 1973 amendment deleted subsection (a); redesignated subsections (b) and (c) as (1) and (2); substituted "the department of health and environmental sciences" in subsection (1) for "such committee"; inserted "and environmental sciences" in the name of the department in subsection (2); substituted the department of agriculture for the state entomologist in subsection (2); and made minor changes in phraseology.

**16-4210. Mosquito control fund.** The board of county commissioners of any county within which a mosquito control board has been created shall establish a mosquito control fund, and at the time fixed by law for levy and assessment of taxes shall levy a tax of not exceeding five (5)



mills on the dollar of the total taxable valuation in such district on all property situated within the said district, the proceeds of which shall be placed in a separate fund with the county treasurer of such county and shall be used solely for the purpose for which such mosquito control district was created. Warrants upon such fund shall be drawn by the board of county commissioners upon the presentation of claims approved by the mosquito control board.

**History:** En. Sec. 10, Ch. 183, L. 1953; amd. Sec. 1, Ch. 22, L. 1969.

property" for "real property" before "situated within the said district" in the first sentence.

#### Amendments

The 1969 amendment substituted "all

**16-4211. Dissolution of mosquito control district—hearing—notice—unexpended funds.** A mosquito control district may be dissolved upon presentation to the board of county commissioners of a petition signed by at least fifty-one per cent (51%) of the qualified electors or of the property owners within the district. Upon the filing of such petition, the board of county commissioners shall set a time for hearing the same and shall cause notice thereof to be mailed to all nonresident property owners within the district whose addresses are known, to be posted in at least three (3) public places within said district and to be published at least once in the official newspaper of the county, published in the district, such posting and publication to be at least ten (10) days before said date of hearing. If the district is partly in one (1) county and partly in another county, notice must be posted in each county but not three (3) places in each county, and notice must be published in the official newspaper of each county. If upon such hearing, the commissioners find such petition to be sufficient and that the district is not indebted in any amount beyond the funds immediately available to extinguish all of its debts and obligations, and that there is good reason for the dissolution of such district, the commissioners shall enter upon their minutes an order dissolving such district. The effective date of such dissolution shall be set by the commissioners at such time within the fiscal year as best conforms with the operations of the county budget providing that before the dissolution shall be effective for all purposes, the mosquito control board of the district shall certify to the commissioners that all debts and obligations of the district have been paid, discharged, or irrevocably settled together with legal proof thereof. Any funds unexpended at the dissolution of a district shall be paid over into the county general fund, and where the district is partly in one (1) county and partly in another county, the funds shall be apportioned between the counties and such apportionment shall be based on the taxable value of the property which is within the district. Physical assets may be liquidated as provided for in section 16-1009, and where the district is partly in one (1) county and partly in another county, the proceeds of the sale of physical assets will be apportioned in like manner as the liquid assets.

**History:** En. Sec. 11, Ch. 183, L. 1953; amd. Sec. 8, Ch. 337, L. 1973; amd. Sec. 6, Ch. 399, L. 1975.

#### Amendments

The 1973 amendment substituted "at least fifty-one per cent (51%) of the qualified electors" at the end of the first

sentence for "the owners of at least fifty-one per cent (51%) of the resident-owned land lying within such district"; inserted "and that the district is not indebted in any amount beyond the funds immediately available to extinguish all of its debts and obligations" in the fourth sentence; added the proviso to the fifth sentence; substituted "property" for "land" near the end of the sixth sentence; and made minor changes in phraseology.

The 1975 amendment added "or of the property owners within the district" to the end of the first sentence; and inserted "to

be mailed to all nonresident property owners within the district whose addresses are known" in the second sentence.

#### Effective Dates

Section 9 of Ch. 337, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 17, 1973.

Section 7, Ch. 399, Laws 1975 provided the act should be effective from and after its passage and approval. Approved April 12, 1975.

### CHAPTER 43—PUBLIC HOSPITAL DISTRICTS

#### Section

- 16-4301. Purpose of act—allowable territory embraced within public hospital district.
- 16-4301.1. "Hospital facilities" defined.
- 16-4302. Petition to board of county commissioners.
- 16-4303. Hearing.
- 16-4304. Reference of creation of district at election.
- 16-4305. Resolution and order of board as respects election.
- 16-4306. Favorable vote—commissioners finally to organize district.
- 16-4307. Government of district—appointment, election and terms of trustees.
- 16-4308. Powers of district.
- 16-4309. Budget and tax levy.
- 16-4309.1. Additional tax levy—election—majority vote required.
- 16-4309.2. Notice—conduct of election—returns.
- 16-4310. Tax collections and funds.
- 16-4311. Withdrawal of portion of district, petition for.
- 16-4312. Alteration of boundaries—annexation.
- 16-4313. Dissolution of district.

**16-4301. Purpose of act—allowable territory embraced within public hospital district.** The purpose of this act is to authorize the establishment of public hospital districts which shall have power to supply hospital facilities and services to residents of such districts, and as herein authorized, to others. A public hospital district may contain the entire territory embraced within a county or any portion or subdivision thereof.

**History:** En. Sec. 1, Ch. 155, L. 1953; amd. Sec. 1, Ch. 257, L. 1969.

#### Amendments

The 1969 amendment deleted "to own and operate public hospitals, or to lease

and operate public hospitals, or to maintain or aid in the maintenance and operation of a public hospital, and in either case" after "shall have power" in the first sentence.

**16-4301.1. "Hospital facilities" defined.** As used in this chapter, unless the context otherwise requires, "hospital facilities" means a hospital or a hospital-related facility, including out-patient facilities, public health centers, rehabilitation facilities, long-term care facilities and infirmaries.

**History:** En. Sec. 1, Ch. 336, L. 1973.

#### Title of Act

An act to add a new section to Title 16,

chapter 43, R. C. M. 1947, relating to public hospital districts; providing for a definition of the term "hospital facilities" as used in the chapter.

**16-4302. Petition to board of county commissioners.** Proceedings for creation of a hospital district shall be initiated by a petition, signed by not



less than thirty per centum (30%) of the qualified electors of the proposed hospital district, who are taxpayers upon property within the proposed hospital district and whose names appear on the last completed assessment roll for state and county taxes. The petition may consist of one (1) sheet or several sheets identical in form and fastened together after being circulated and signed so as to form a single, complete petition before being delivered to the county clerk. The petition shall give the post-office address and voting precinct of each petitioner. Only persons who are qualified to sign such petitions shall be qualified to circulate the same, and there shall be attached to the complete petition the affidavit of some person who circulated or assisted in circulating the petition, that he believes the signatures thereon are genuine and the signers knew the contents thereof before signing the same. The complete petition, addressed to the board of county commissioners of the county in which the proposed district is situated, shall be filed with the county clerk, who shall within fifteen (15) days thereafter, carefully examine the same and the county records showing the qualifications of the petitioners, and attach it to a certificate under his official signature and the seal of his office, which certificate shall set forth:

(1) The total number of persons who are registered electors within the proposed hospital district and whose names appear upon the last completed assessment roll for state and county taxes.

(2) Which and how many of the persons whose names are subscribed to such petition are possessed of all of the qualifications required of signers to such petition.

(3) Whether such qualified signers constitute more or less than thirty per cent (30%) of the registered electors of the proposed hospital district who are taxpayers upon property thereon and whose names appear on the last completed assessment roll for state and county taxes. The county clerk shall present the petition and his certificate to the board of county commissioners at its first meeting held after he has attached his certificate. The board shall thereupon carefully examine the petition and, if it is found that the petition is in proper form and bears the requisite number of signatures of qualified petitioners, the board shall by resolution call a hearing on the creation of such hospital district. A notice of such hearing shall be published in a newspaper having general circulation in the territory within the boundaries of the proposed hospital district, once each week for at least two (2) weeks, the last publication to be at least two (2) weeks before the hearing. If there is no newspaper having general circulation within the boundaries of the proposed hospital district, the notice of hearing shall be posted in at least three (3) public places within the boundaries of the proposed district for two (2) weeks before the hearing. The notice shall state the time, date, place and purpose of the hearing, describe the boundaries of the proposed hospital district, and state that any person residing in or owning property within the proposed hospital district may appear in support of or in opposition to the petition at such hearing.

**History:** En. Sec. 2, Ch. 155, L. 1953;  
amd. Sec. 2, Ch. 257, L. 1969.

**Amendment**

The 1969 amendment rewrote this sec-



tion and, inter alia, inserted specific provisions as to form, circulation and certifi-

cation of the petition. For previous text, see parent volume.

**16-4303. Hearing.** At the time fixed for said hearing, the board shall hear all competent and relevant testimony offered in support of or in opposition to said petition and the creation of such district. Said hearing may be adjourned from time to time for the determination of said facts, or hearing petitioners or objectors, without additional published or posted notice, but no adjournment shall exceed two (2) weeks in all from and after the date originally noticed and published for the hearing.

**History:** En. Sec. 3, Ch. 155, L. 1953; amd. Sec. 3, Ch. 257, L. 1969.

#### Amendments

The 1969 amendment deleted "determine whether or not the petition complies with the requirements hereinbefore set forth and whether or not the notice required

herein has been published as required" from the end of the first sentence, and "At such hearing the board must" from beginning of former second sentence, making the present first sentence; and inserted "without additional published or posted notice," after "petitioners or objectors" in the second sentence.

**16-4304. Reference of creation of district at election.** The board of county commissioners, upon completion of the hearing hereinabove provided for, shall thereupon proceed by resolution to refer the question of the creation of such district to the persons qualified to vote on such proposition. Said board, in its resolution of reference, may make such changes in the boundaries of the proposed district as it may deem advisable, without, however, including any additional lands not described in the petition, and it shall call an election, upon the question of the creation of the district.

**History:** En. Sec. 4, Ch. 155, L. 1953; amd. Sec. 4, Ch. 257, L. 1969.

#### Amendments

The 1969 amendment, in the first sentence, deleted "If" at the beginning, substituted "upon completion \* \* \* provided for" for "shall determine that the peti-

tioners have complied with the requirements herein set forth and that the prescribed notice has been published, It" and deleted "as in this act prescribed" at the end; and in the second sentence, deleted "and shall define and establish the boundaries of the district" after "described in the petition."

**16-4305. Resolution and order of board as respects election.** The board must, in its resolution, designate whether a special election shall be held or whether the matter shall be determined at the next general election. If a special election is ordered, the board must, in its order, specify the date for such election, the voting places, and shall appoint and designate judges and clerks therefor. The election shall be held in all respects as nearly as practicable in conformity with the general election laws; provided that if a special election is held the polls shall be open from 8 a. m. to 6 p. m., on the day appointed for such election. At such election, the ballots must contain the words "Hospital District, Yes" and "Hospital District, No." The judges of the election shall certify to the board of county commissioners the results of said election. No person shall be qualified to vote at such election who has not attained legal age, who is not an owner of property within the boundaries of said district as defined by the board, and whose name does not appear on the last completed assessment roll of the county. Only qualified, registered electors residing within the proposed hospital district, who are taxpayers upon property therein

and whose names appear on the last completed assessment roll for state and county taxes shall have the right to vote on the question of the creation of the hospital district.

**History:** En. Sec. 5, Ch. 155, L. 1953; amd. Sec. 5, Ch. 257, L. 1969.

#### Amendments

The 1969 amendment added the last sentence; and made numerous wording changes as follows: in the first sentence, deleted "or not" after "designate whether"; in the second sentence, substituted

"date for such election" for "time and place for such election" and deleted "in said order" before "appoint and designate"; in the proviso of the third sentence, inserted "if a special election is held" and deleted "o'clock" before "a. m." and "p. m."; and in the sixth sentence, substituted "legal age" for "twenty-one (21) years of age."

**16-4306. Favorable vote—commissioners finally to organize district.** In the event that a majority of the votes cast are in favor of the creation and establishment of said hospital district, the board of county commissioners shall, within ten (10) days after the election, by resolution certify such result, and proceed with the organization of such district as herein specified. After twenty (20) days from the passage of such resolution, the validity of the creation of such hospital district and the regularity of all proceedings preliminary thereto, shall not be questioned or asserted in any legal action.

**History:** En. Sec. 6, Ch. 155, L. 1953; amd. Sec. 6, Ch. 257, L. 1969.

#### Amendments

The 1969 amendment added the second sentence.

**16-4307. Government of district—appointment, election and terms of trustees.** Said hospital district shall be governed and managed by a board of three (3) or five (5) trustees, elected by the registered electors residing in the district. The number of trustees on the board and, if the number is set at five (5), the initial terms of two (2) trustees, shall be fixed by the bylaws of the district. The trustees must be elected from among the registered electors qualified to vote at general elections within said district. The first board of trustees shall be elected at the same election held upon the creation of the district, subject to the creation thereof, shall qualify upon the organization of the district, if created, and the trustees may be nominated and have their names appear upon the ballots upon the filing with the board of county commissioners of a petition signed by any five (5) qualified electors of the district. Any elector may sign as many nominating petitions as there are persons to be elected. The trustees elected for the first board shall serve for terms commencing upon their being elected and qualified and terminating one (1), two (2) and three (3) years respectively, from the first Monday in May following their election, and until their respective successors shall be elected and qualify. Annually thereafter there may be elected a trustee to serve for a term of three (3) years and until his successor shall be qualified and such term of three (3) years shall commence on the first Monday in May following the said trustee's election. All elections and nominations for election of trustees thereafter, shall be conducted by said qualified voters in the same manner as provided by the laws of the state of Montana for the election of school trustees of a second or third class school district, provided that wherever in the said laws of the state of Montana it is



provided that certain action shall be performed or filings made with the clerk of the school board, the trustees or the board of trustees of the school district or the county superintendent of schools, the same shall, for the purposes of this act, be taken to refer to the clerk of the board of trustees of the public hospital district, the trustees or the board of trustees of the public hospital district or the county clerk, respectively. If there is no nomination petition filed it shall not be necessary to hold an election but the board of county commissioners shall appoint a trustee to fill the term, the term to be the same as if the trustee were elected. The trustees at their first meeting shall adopt bylaws for the government and management of the district, and shall appoint a qualified person to serve as clerk of the said board, who may or may not be one of their number. The trustees shall serve without pay. A vacancy upon the board of trustees, or in the office of clerk shall be filled by appointment by the remaining members and the appointee shall serve until the next ensuing election for trustees.

**History:** En. Sec. 7, Ch. 155, L. 1953; amd. Sec. 1, Ch. 97, L. 1955; amd. Sec. 7, Ch. 257, L. 1969; amd. Sec. 1, Ch. 399, L. 1971; amd. Sec. 1, Ch. 277, L. 1975.

#### Amendments

The 1969 amendment, in the first sentence, substituted "registered electors residing in the district" for "persons within the district who have the same qualifications as voters upon the question of 'creation of the district' "; divided the former third sentence into the present third and sixth sentences; in the third sentence, substituted "registered electors qualified to vote at general elections" for "freeholders residing within said district"; and rearranged the order of the sentences.

The 1971 amendment substituted "may" for "shall" in the seventh sentence; inserted the present eighth sentence, providing for the appointment of a trustee for a hospital district when no nominations are submitted; and made minor changes in punctuation and phraseology.

The 1975 amendment inserted "or five (5)" in the first sentence; and inserted the second sentence.

#### Effective Date

Section 2, Ch. 277, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved April 7, 1975.

**16-4308. Powers of district.** A hospital district shall have all powers necessary and convenient to the acquisition, betterment, operation, maintenance and administration of such hospital facilities as its board of trustees shall deem necessary and expedient. Without limitation on the foregoing general grant of powers, a hospital district, acting by its board of trustees, may:

- (1) Employ nursing, administrative, and other personnel, legal counsel, engineers, architects, accountants, and other qualified persons, who may be paid for their services by monthly salaries, hourly wages, and pension benefits, or by such fees as may be agreed upon;
- (2) Cause reports, plans, studies, and recommendations to be prepared;
- (3) Lease, purchase, and contract for the purchase of real and personal property by option, contract for deed, conditional sales contract, or otherwise, and acquire real or personal property by gift;
- (4) Lease or construct, equip and furnish necessary buildings and grounds and maintain the same;



(5) Adopt, by resolution, rules and regulations for the operation and administration of any and all hospital facilities under its control, and for the admission of persons thereto;

(6) Impose by resolution, and collect charges for all services and facilities provided and made available by it;

(7) Levy taxes as hereinafter prescribed;

(8) Borrow money and issue bonds as hereinafter prescribed;

(9) Procure insurance against liability of the district or its officers and employees or both, for torts committed within the scope of their official duties, whether governmental or proprietary, and against damage to or destruction of any of its facilities, equipment, or other property;

(10) Sell or lease any of its facilities or equipment as may be deemed expedient;

(11) Cause audits to be made of its accounts, books, vouchers, and funds by competent public accountants. Such a hospital district must admit to its facilities persons without regard to race, color, or sex, but such obligation shall not prevent the board of trustees of such hospital district from establishing reasonable minimum rates for hospital quarters, services and supplies; indigents needing such services, and for the rendition of which provision is made by the laws of Montana, must be admitted to such public hospitals, on terms and rates prescribed or authorized by law. A hospital district may borrow money by the issuance of its bonds to provide funds for payment of part or all of the cost of acquisition, furnishing, equipment, improvement, extension and betterment of hospital facilities, and to provide an adequate working capital for a new hospital, but the amount of bonds issued for such purpose and outstanding at any time shall not exceed five per cent (5%) of taxable property therein, as ascertained by the last assessment for state and county taxes previous to the issuance of such bonds. Such bonds shall be authorized, sold, issued and provision made for their payment in the manner and subject to the conditions and limitations prescribed for bonds of second or third class school districts by sections 75-3903 through 75-3934. Nothing herein shall be construed to preclude the provisions of sections 69-5301 through 69-5313 allowing the state to apply for and accept federal funds.

**History:** En. Sec. 8, Ch. 155, L. 1953;  
amd. Sec. 8, Ch. 257, L. 1969.

#### Amendment

The 1969 amendment rewrote this section, rewording the general grant of powers, placing it at the beginning of the section, and adding additional specified powers. For previous text, see parent volume.

#### Compiler's Notes

Sections 75-3903 through 75-3934, referred to in this section, were repealed by sec. 496, Ch. 5, Laws of 1971. For present law relating to school district bonds, see secs. 75-7101 to 75-7132.

**16-4309. Budget and tax levy.** The board of hospital trustees shall, annually, present their budget to the board of county commissioners at the regular budget meetings as prescribed by law, and therewith certify the amount of money necessary and proper for the ensuing year. The board of county commissioners must, annually, at the time of levying county taxes, fix and levy a tax, in mills, upon all property within said hospital

district clearly sufficient to raise the amount certified by the board of hospital trustees. The tax so levied for all hospital district purposes other than payment of bonded indebtedness shall not in any year exceed three (3) mills on each dollar of taxable valuation of property within said district.

**History:** En. Sec. 9, Ch. 155, L. 1953; amd. Sec. 9, Ch. 257, L. 1969.

hospital district purposes other than payment of bonded indebtedness" after "The tax so levied" in the last sentence.

**Amendments**

The 1969 amendment inserted "for all

**16-4309.1. Additional tax levy—election—majority vote required.** (1) If the maximum levy of three (3) mills on each dollar of taxable valuation of property within the hospital district is inadequate to raise the amount of money certified as necessary and proper by the board of hospital trustees, as provided in section 16-4309, the board of county commissioners may make an additional levy upon the taxable property within said hospital district of three (3) mills or less sufficient to raise the amount certified by the board of hospital trustees.

(2) Before the additional levy may be made, the question shall be submitted to a vote of the people at some general or special election in the following form: "Shall there be an additional levy of (specify number) mills upon the taxable property of the (specify hospital district) necessary to raise the sum of (specify the amount to be raised by the additional tax levy) for the purpose of (specify purpose for which the additional levy is made)?"

"☐ For an additional levy to raise the sum of (state the amount to be raised by the additional tax levy), and being (give number) mills.

"☐ Against an additional tax levy to raise the sum of (state amount to be raised by the additional tax levy), and being (give number) mills."

(3) A majority of the votes cast shall be necessary to permit the additional levy which shall be collected in the same manner as other hospital district taxes.

(4) If the calculated percentage of qualified electors voting in the election is less than thirty per cent (30%), the additional levy shall be deemed to have been rejected.

**History:** En. 16-4309.1 by Sec. 1, Ch. 132, L. 1974.

authorize an additional tax levy of three (3) mills or less for funding public hospital districts.

**Title of Act**

An act to provide for an election to

**16-4309.2. Notice—conduct of election—returns.** Notice of the election, clearly stating the amount and the purpose of the additional levy, must be given and the election held and conducted, and the returns made in all respects in the manner prescribed by law with regard to the submission of questions to the electors under the general election laws.

**History:** En. 16-4309.2 by Sec. 2, Ch. 132, L. 1974.

**16-4310. Tax collections and funds.** The procedures for the collection of the tax shall be in accordance with the existing laws of the state of



Montana. The funds collected under the tax levy shall be held by the county treasurer who shall be, ex officio, the treasurer for the hospital district and such treasurer shall keep a detailed account of all tax moneys paid into the fund, of all other moneys from any source received by the district, and of all payments and disbursements from the fund. Funds shall be paid out on warrants issued by direction of the board of trustees, signed by the majority of its membership.

**History:** En. Sec. 10, Ch. 155, L. 1953; amd. Sec. 2, Ch. 97, L. 1955; amd. Sec. 10, Ch. 257, L. 1969.

caption "Tax collections and fines" for "Regulations"; and deleted the former first sentence which read, "The trustees shall make proper rules and regulations for the management of such hospitals."

#### **Amendments**

The 1969 amendment substituted the

**16-4311. Withdrawal of portion of district, petition for.** Any portion of a public hospital district may be withdrawn therefrom as in this section provided, upon receipt of a petition signed by fifty-one per centum (51%) of the taxpayers, or more, residing in and owning property within the area desired to be withdrawn from any public hospital district, on the grounds that such area will not be benefited by remaining in said district. The board of county commissioners shall, upon the filing of such a petition, fix a time for the hearing of such withdrawal petition which time shall not be more than four (4) weeks after the receipt thereof. The board shall, at least two (2) weeks prior to the time so fixed, publish a notice of such hearing in two (2) successive issues of a newspaper published in the county. No petition for withdrawal shall be entertained or acted upon by the board, unless the same is filed before December 31 of the preceding year. Any person interested may appear at said hearing and present objections to the withdrawal of said portion from said district. The board shall consider the petition and all objections thereto, and pass upon the merits thereof, and make its order in accordance therewith. Any withdrawal shall be effective as of January 1 following the issuance of the withdrawal order. Such order is subject to review by the district court of the county, and appeal may be taken from the final judgment of such district court to the supreme court of Montana. All taxable property within the withdrawn area shall remain subject to taxation for any bonded indebtedness of the hospital district existing as of the effective date of the withdrawal, to the same extent as it would have been subject if not withdrawn.

**History:** En. Sec. 11, Ch. 155, L. 1953; amd. Sec. 11, Ch. 257, L. 1969; amd. Sec. 24, Ch. 388, L. 1975.

#### **Amendments**

The 1969 amendment inserted the seventh sentence and added the last sentence.

The 1975 amendment changed the filing date in the fourth sentence from the first Monday in March of any year to before December 31 of the preceding year; and changed the withdrawal date in the seventh sentence from March the 1st to January the 1st.

**16-4312. Alteration of boundaries—annexation.** The boundaries of any such public hospital district may be altered and outlying districts be annexed from territory contiguous thereto in the following manner: A petition signed by ten per centum (10%) or more freeholders within the territory proposed to be annexed, or by a majority of such freeholders if



there are less than twenty-five (25) residing within the area proposed to be annexed, designating the boundaries of such contiguous territory proposed to be annexed and asking that it be annexed to said public hospital district, shall be presented to the board of county commissioners of the county in which said public hospital district is situated. At the first regular meeting after the presentation of said petition, said board of county commissioners shall cause notice of said petition to be published in two (2) successive issues of a newspaper published in the county prior to the date fixed by said board for the hearing of said petition, which date shall be not less than four (4) weeks after the filing of such petition. Upon the date fixed for such hearing or continuance thereof, said board shall take up and consider said petition and any objections which may be filed to the inclusion of any additional area or territory in said district. Said board of county commissioners shall have the power by order entered on its minutes to grant said petition either in whole or in part, and by order entered on its minutes to alter the boundaries of said public hospital district and to annex thereto all, or such portion of said area or territory described in said petition as will be benefited thereby. This territory shall become and be a part of such public hospital district on the date fixed in the order of annexation, and shall be subject to the taxes authorized by this act, including taxes for any pre-existing indebtedness, together with the pre-existing area of said district, and such taxes shall be uniform for the whole area and territory in the district, as enlarged.

**History:** En. Sec. 12, Ch. 155, L. 1953;  
amd. Sec. 12, Ch. 257, L. 1969.

**Amendments**

The 1969 amendment, in the last sen-

ence, inserted "on the date fixed in the order of annexation," substituted "taxes" for "tax" in two instances, and inserted "including taxes for any pre-existing indebtedness."

**16-4313. Dissolution of district.** At any time after five (5) years from the date any public hospital district is created, such district may be dissolved upon presentation to the board of county commissioners of a petition signed by at least fifty-one per centum (51%) of the owners of property lying within such district as shown by the last completed assessment roll. Upon the filing of such petition, the board of county commissioners shall set a time for hearing the same and shall cause notice thereof to be posted in at least three (3) separate public places within said district for at least two (2) weeks prior to the hearing, and which notice shall, also, be published for at least two (2) successive issues in a newspaper published in the county prior to such hearing. If upon such hearing the commissioners find such petition to be sufficient and that the district is not indebted in any amount beyond funds immediately available to extinguish all of its debts and obligations and that there is good reason for the dissolution of such district, the commissioners shall enter upon their minutes an order dissolving such district. Such order shall be filed, of record, and the dissolution shall be effective for all purposes six (6) months after the date of filing said order of dissolution, providing that at or before such time the board of trustees of said district certifies to the board of county commissioners that all debts and obligations of the district have been paid, discharged or irrevocably settled, together with legal proof thereof. Any assets of the district remaining after all debts and obliga-

tions of the district have been paid, discharged or irrevocably settled, shall become the property of the county.

**History:** En. Sec. 13, Ch. 155, L. 1953;      **Amendments**  
amd. Sec. 13, Ch. 257, L. 1969.

The 1969 amendment added the last sentence.

#### CHAPTER 44—METROPOLITAN SANITARY AND/OR STORM SEWER SYSTEMS

##### Section

16-4412. Federal funds for local public works programs.

16-4416. Rates, charges and rentals for services.

**16-4412. Federal funds for local public works programs.** The board of county commissioners are hereby authorized to apply for, and receive from, the federal government on behalf of said metropolitan sanitary and/or storm sewer district, any moneys that may be appropriated by the Congress for aiding in local public works projects, and likewise the board of county commissioners may borrow from the federal government any funds available for assisting in the planning or financing of local public works projects, and repay the same out of the moneys received from the tax levy provided for in this act.

Notwithstanding any other section of this chapter, or limitation imposed therein, and when the board has applied pursuant to this section, the board may adopt a system of charges and rates to require that each recipient of treatment works services pays its proportionate share of the costs of operation, maintenance and replacement, and to require industrial users of treatment works to pay that portion of the cost of construction of the treatment works which is allocable to the treatment of that industrial users' wastes.

**History:** En. Sec. 12, Ch. 185, L. 1957;      **Amendments**  
amd. Sec. 16, Ch. 455, L. 1975.

The 1975 amendment added the second paragraph.

**16-4416. Rates, charges and rentals for services.** The board of county commissioners shall have full power and authority by ordinance or resolution to fix and establish just and equitable rates, charges and rentals for the services and benefits directly or indirectly afforded by any sanitary or storm sewer system operated, controlled, and under the jurisdiction of a metropolitan sanitary and/or storm sewer district formed under this chapter. Such rates, charges and rentals shall be as nearly as possible equitable in proportion to the services and benefits rendered, and may take into consideration the quantity of sewage produced and its concentration and water pollution qualities in general and the cost of disposal of sewage and storm waters. The board of county commissioners shall have authority, by resolution and after public hearing, to fix and establish the sewer rates, charges and rentals at amounts sufficient in each year, not to exceed seven dollars (\$7) per unit user per year, to provide income and revenues adequate for the payment of the reasonable expense of operation and maintenance of the system; to fix and establish an additional charge not to exceed seven dollars (\$7) per unit user per year for the operation and maintenance of a sanitary and storm sewer system and of a sewage treatment



plant; and to levy and to assess a tax upon the taxable valuation of each and every lot or parcel of land and improvements thereon in the district not in excess of two (2) mills on each dollar of taxable valuation to provide sufficient revenues for the reserve fund of the amounts necessary to meet the financial requirements of such fund as described in section 16-4417.

**History:** En. 16-4416 by Sec. 3, Ch. 165, L. 1965; amd. Sec. 1, Ch. 202, L. 1967; amd. Sec. 1, Ch. 209, L. 1969.

#### Amendments

The 1969 amendment, in the first sentence, substituted "operated, controlled, and under the jurisdiction of" for "construction in and for"; in the third sen-

tence, inserted "public" before "hearing," raised the maximum per unit user charge from \$5 per year to \$7, raised the maximum additional charge from \$3 to \$7, substituted "for the operation and maintenance \* \* \* a sewage treatment plant" for "reasonable expense of operation and maintenance of a sewage treatment plant" and made minor changes in phraseology.

### CHAPTER 45—COUNTY WATER AND SEWER DISTRICTS

#### Section

- 16-4503. Petition—boundaries of district—publication.
- 16-4505. Proposition submitted—who may vote—certificate of secretary of state—district deemed incorporated—must hear testimony—suit commenced within one year—election.
- 16-4506. Election of directors—term of office.
- 16-4507. Nomination of officers.
- 16-4508. General law to govern.
- 16-4517. Bonded indebtedness.
- 16-4520. Publication.
- 16-4522. Sixty per cent vote necessary.
- 16-4526. Rate to pay operating expenses.
- 16-4527. Commissioners to levy water taxes.
- 16-4533. Exclusion of territory—petition—contents—duties of secretary—hearing—order excluding lands.
- 16-4535. Elections may be combined.

**16-4503. Petition—boundaries of district—publication.** A petition, which may consist of any number of separate instruments, shall be presented at a regular meeting of the board of commissioners of the county in which the proposed district is located, signed by the registered voters within the boundaries of the proposed district, equal in number to at least ten per centum (10%) of the registered voters of the territory included in such proposed district. When the territory to be included in such proposed district lies in more than one county, a petition must be presented to the board of county commissioners of each county in which said territory lies and each of said petitions must be signed by at least ten per centum (10%) of the registered voters of the territory within said county to be included within such proposed district. Such petition shall set forth and describe the proposed boundaries of such district, and shall pray that the same be incorporated under the provisions of this act, and the text of such petition shall be published once each week for 2 consecutive weeks in a newspaper printed and published in every county in which said territory lies, together with a notice stating the time of the meeting at which same will be presented. The first publication shall be at least two (2) weeks before the time at which the petition is to be presented. When contained upon more than one (1) instrument, one (1) copy only of such petition need be published. No more than five of the names attached to said petition



need appear in such publication of said petition and notice, but the number of signers shall be stated.

History: En. Sec. 3, Ch. 242, L. 1957; amd. Sec. 2, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 1, Ch. 296, L. 1977.

#### Amendments

The 1977 amendment substituted "once each week for 2 consecutive weeks in a newspaper" near the middle of the section for "for ten (10) consecutive days in a daily newspaper or in two (2) issues of a weekly newspaper."

**16-4505. Proposition submitted—who may vote—certificate of secretary of state—district deemed incorporated—must hear testimony—suit commenced within one year—election.** Upon such hearing of said petition, the board of commissioners shall determine whether or not said petition complies with the requirements of the provisions of this act, and for that purpose must hear all competent and relevant testimony offered in support of or in opposition thereto. Such determination shall be entered upon the minutes of said board of commissioners. A finding of the board of commissioners in favor of the genuineness and sufficiency of the petition and notice shall be final and conclusive against all persons except the state of Montana upon suit commenced by the attorney general. Any such suit must be commenced within one (1) year after the order of the board of commissioners declaring such district organized as herein provided, and not otherwise. Upon the final determination of the boundaries of the district the board of commissioners of each county in which said district lies shall give notice of an election to be held in said proposed district for the purpose of determining whether or not the same shall be incorporated, the date of which election shall be not more than sixty (60) days from the date of the final hearing of such petition. Such notice shall describe the boundaries so established and shall state the proposed name of the proposed incorporation (which name shall contain the words "\_\_\_\_\_ county water and/or sewer district"), and this notice shall be published once each week for 2 consecutive weeks in a newspaper printed and published in every county in which said district lies. The first publication shall be made at least two (2) weeks before the time at which the election is to be held. At such election the proposition to be submitted shall be: "Shall the proposition to organize \_\_\_\_\_ county water and/or sewer district under (naming the chapter containing this act) of the acts of the \_\_\_\_\_ session of the Montana legislature and amendments thereto be adopted?" And the election thereupon shall be conducted, the vote canvassed and the result declared in the same manner as provided by law in respect to general elections, so far as they may be applicable, except as in this act otherwise provided. No person shall be entitled to vote at any election under the provisions of this act unless such person possesses all the qualifications required of voters under the general election laws of the state, and is a resident of the proposed district or the owner of taxable real property located within the county in which he proposes to vote and situated within the boundaries of the proposed district; provided however a person who is the owner of such real property need not possess the qualifications required of a voter in subsection (1)(c) of section 23-2701, R.C.M. 1947; provided further that such voter shall be qualified if he is registered

to vote in any state of the United States. Within four (4) days after such election the vote shall be canvassed by the board of commissioners. If at least forty percent (40%) of all registered voters residing within the proposed district have voted and if a majority of the votes cast at such election in each municipal corporation or part thereof and in the unincorporated territory of each county included in such proposed district shall be in favor of organizing such county district, said board of each such county shall by an order entered on its minutes declare the territory enclosed within the proposed boundaries duly organized as a county water and/or sewer district under the name theretofore designated, and the county clerk of each such county shall immediately cause to be filed with the secretary of state and shall cause to be recorded in the office of the county recorder of the county or counties in which such district is situated, each, a certificate stating that such a proposition was adopted. Upon the receipt of such last-mentioned certificate the secretary of state shall, within ten (10) days, issue his certificate reciting that the district (naming it) has been duly incorporated according to the laws of the state of Montana. A copy of such certificate shall be transmitted to and filed with the county clerk of the county or counties in which such district is situated. From and after the date of such certificate, the district named therein shall be deemed incorporated, with all the rights, privileges and powers set forth in this act and necessarily incident thereto. In case less than a majority of the votes cast are in favor of said proposition the organization fails but without prejudice to renewing proceedings at any time in the future.

**History:** En. Sec. 5, Ch. 242, L. 1957; amd. Sec. 4, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 1, Ch. 257, L. 1974; amd. Sec. 1, Ch. 521, L. 1975; amd. Sec. 2, Ch. 296, L. 1977.

#### Amendments

The 1974 amendment substituted "voters" in the tenth sentence, near the middle of the section, for "electors"; inserted "a resident of the proposed district or" and "or lessee" in the tenth sentence before and after "the owner," respectively; added the clauses at the end of the tenth sentence reading "provided however \* \* \* the United States"; and inserted "at least

forty per cent (40%) of all eligible voters within the proposed district have voted and if" at the beginning of the twelfth sentence.

The 1975 amendment deleted "or lessee" after "the owner" in two places in the tenth sentence; and substituted "registered voters residing within" for "eligible voters within" near the beginning of the twelfth sentence.

The 1977 amendment substituted "once each week for 2 consecutive weeks in a newspaper" near the middle of the section for "for ten (10) consecutive days in a daily newspaper or in two (2) issues of a weekly newspaper."

**16-4506. Election of directors—term of office.** At an election to be held within such district under the provisions of this act and the laws governing general elections not inconsistent herewith, the district thus organized shall proceed within ninety (90) days after its formation to the election of a board of directors consisting, if there are no municipalities within the boundaries of said district, of five (5) members, or three (3) members if there are ten (10) or less qualified electors in the district. In all cases where the boundaries of such district include any municipality or municipalities, said board of directors, in addition to said five (5) or three (3) directors to be elected as aforesaid, shall consist of one (1) additional director for each one of said municipalities within such district, each such additional director to be appointed by the mayor of the municipality for which said additional director is allowed; and if there be any unincorporated territory within



said district, one additional director, to be appointed by the board of commissioners of each county containing such territory. Any director so elected or appointed shall be an owner or lessee of real property within said district or a resident therein. All directors, elected or appointed, shall hold office until the election and qualification or appointment and qualification of their successors. The term of office of directors elected under the provisions of this act shall be four (4) years from and after the date of their election; provided, that the directors first elected after the passage of this act shall hold office only until the election and qualification of their successors as hereinafter provided. The term of office of directors appointed by said mayor or mayors or by said board of commissioners shall be six (6) years from and after the date of appointment. Directors to be first appointed under the provisions of this act shall be appointed within ninety (90) days after the formation of the district. The election of directors of such district shall be in every fourth year after its organization, on the fourth Tuesday in March, and shall be known as the "general district election." All other elections which may be held by authority of this act, or of the general laws, shall be known as "special district election."

**History:** En. Sec. 6, Ch. 242, L. 1957; amd. Sec. 5, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 2, Ch. 257, L. 1974; amd. Sec. 1, Ch. 310, L. 1975.

#### Amendments

The 1974 amendment substituted "an owner or lessee of real property within

said district or a resident therein" at the end of the third sentence for "a qualified freeholder and a resident of said district."

The 1975 amendment added "or three (3) members if there are ten (10) or less qualified electors in the district" to the end of the first sentence; and inserted "or three (3)" in the second sentence.

**16-4507. Nomination of officers.** (1) and (2) \* \* \* [Same as parent volume.]

(3) The petition of nomination shall consist of not less than five (5) individual certificates, which shall read substantially as follows:

### PETITION OF NOMINATION

#### Individual Certificate

State of .....

County of .....

Preet. No. ....

I, the undersigned, certify that I do hereby join in a petition for the nomination of ....., whose residence is at ..... for the office of ..... of the ..... district to be voted for at the district election to be held in the ..... district on the ..... day of ....., 19....; and I further certify that I am a qualified elector and an owner or lessee of real property within said district, or a resident therein, and am not at this time a signer of any other petition nominating any other candidate for the above named office; or, in case there are several places to be filled in the above named office, that I have not signed more petitions than there are places to be filled in the above named office; that my residence is at No ..... street, ....., and that my occupation is .....

(Signed) .....



State of Montana

County of .....

....., being duly sworn, deposes and says that he is the person who signed the foregoing certificate and that the statements therein are true and correct.

(Signed) .....

Subscribed and sworn to before me this ..... day of ....., 19....

Notary Public

The petition of nomination of which this certificate forms a part shall, if found insufficient, be returned to ....., at ....., Montana.

(4) \* \* \* [Same as parent volume.]

(5) Certificates. Each certificate must be a separate paper. All certificates must be of uniform size as determined by the county clerk. Each certificate must contain the name of one signer thereto and no more. Each certificate shall contain the name of one candidate and no more. Each signer must be a qualified elector owning real property or residing within said district, must not at the time of signing a certificate have his name signed to any other certificate for any other candidate for the same office, or, in case there are several places to be filled in the same office, signed to more certificates for candidates for that office than there are places to be filled in such office. In case an elector has signed two or more conflicting certificates, all such certificates shall be rejected. Each signer must verify his certificate and make oath that the same is true, before a notary public. Each certificate shall further contain the name and address of the person to whom the petition is to be returned in case said petition is found insufficient.

(6) Presentation of petition. A petition of nomination, consisting of not less than five (5) individual certificates for any one candidate, may be presented to the county clerk not earlier than forty-five (45) days nor later than thirty (30) days before the election. The county clerk shall endorse thereon the date upon which the petition was presented to him. If the district lies in more than one county, such petition for nomination shall be presented to the county clerk whose county contains the largest percentage of the territory of said district and said county clerk shall fulfill all duties assigned to county clerks in elections under this act.

(7) to (11). \* \* \* [Same as parent volume.]

(12) List of candidates. Immediately after such petitions are filed, the county clerk shall enter the names of the candidates in a list, with the offices to be filled, and shall not later than twenty (20) days before the election certify such list as being the list of candidates nominated as required by the provisions of this act, and the board of commissioners of each county in which the district lies shall cause said certified list of names and the offices to be filled, to be published in the proclamation calling the election at least once each week for 2 consecutive weeks in a newspaper of general circulation published in each county in which such district is located. Such proclamation shall conform in all respects to the general

state law governing the conduct of general elections now or hereafter in force, applicable thereto, except as otherwise herein provided.

(13) to (22) \* \* \* [Same as parent volume.]

**History:** En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977.

#### Amendments

The 1974 amendment substituted "an owner or lessee of real property within said district, or a resident therein" in the nomination certificate in subsection (3) for "freeholder residing within said district"; substituted "owning or leasing or residing upon real property" in the fifth sentence of subsection (5) for "residing

within said district"; and made minor changes in style.

Chapter 310, Laws of 1975 reduced from 25 to 5 the number of individual certificates required in a petition of nomination.

Chapter 521, Laws of 1975 substituted "must be a qualified elector owning real property or residing within said district" in subsection (5) for "must be a qualified elector owning or leasing or residing upon real property within said district."

The 1977 amendment substituted "once each week for 2 consecutive weeks in a newspaper" in subsection (12) for "ten (10) successive days before the election in at least one (1) but not more than three (3) newspapers."

**16-4508. General law to govern.** The provisions of the law relating to the qualifications of electors, the manner of voting, the duties of election officers, the canvassing of returns, and all other particulars in respect to the management of general elections, so far as they may be applicable, shall govern all district elections, except as in this act otherwise provided; provided, however, that where a corporation owns real property within the boundaries of the district, the president, vice-president or secretary of such corporation shall be entitled to cast a vote on behalf of the corporation; provided also that an elector owning real property within the district need not reside within the district in order to vote, and provided that the board of commissioners shall canvass the returns of the first election and that thereafter, except as herein provided, the board of directors shall meet as a canvassing board and duly canvass the returns within four (4) days after any district election, including any district bond election. If the district lies in more than one county, the board of commissioners whose county contains the largest percentage of the territory of said district shall canvass the returns of the first election.

**History:** En. Sec. 8, Ch. 242, L. 1957; amd. Sec. 1, Ch. 258, L. 1959; amd. Sec. 7, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 4, Ch. 257, L. 1974; amd. Sec. 3, Ch. 521, L. 1975.

#### Amendments

The 1974 amendment deleted "taxable"

before "real property" in two places in the first sentence; and inserted "or leasing" after "elector owning" in the first sentence.

The 1975 amendment deleted "or leasing" after "owning" in the second proviso of the first sentence; and made a minor change in phraseology.

**16-4517. Bonded indebtedness.** Whenever the board of directors deem it necessary for the district to incur a bonded indebtedness, it shall by a resolution so declare and state the purpose for which the proposed debt is to be incurred, the land within the district to be benefited thereby, the amount of debt to be incurred, the maximum term the bonds proposed to be issued shall run before maturity, which shall not exceed forty (40) years, and the proposition to be submitted to the electors.

**History:** En. Sec. 17, Ch. 242, L. 1957; amd. Sec. 26, Ch. 234, L. 1971.

#### Amendments

The 1971 amendment deleted "and the

maximum rate of interest to be paid, which shall not exceed seven per cent (7%) per annum" before "and the proposi-

tion to be submitted to the electors" at the end of the section.

**16-4520. Publication.** Such notice shall be published once each week for 2 consecutive weeks in a newspaper published in each county wherein such district is located, which newspaper or newspapers shall be designated by the board of directors. Every qualified elector, owning or residing upon real property, within such voting precincts, but no others, shall be entitled to vote at such election. All the expenses of holding such election shall be borne by the district.

**History:** En. Sec. 20, Ch. 242, L. 1957; amd. Sec. 2, Ch. 258, L. 1959; amd. Sec. 8, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 5, Ch. 257, L. 1974; amd. Sec. 4, Ch. 521, L. 1975; amd. Sec. 4, Ch. 296, L. 1977.

#### Amendments

The 1974 amendment substituted "owning or leasing or residing upon real property" in the second sentence for "owning taxable real property."

The 1975 amendment deleted "or leas-

ing" after "owning" in the second sentence.

The 1977 amendment substituted "once each week for 2 consecutive weeks in a newspaper" for "for ten (10) consecutive days in a daily newspaper or in two (2) issues of a weekly newspaper."

#### Effective Date

Section 6 of Ch. 257, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 21, 1974.

**16-4522. Sixty per cent vote necessary.** If from such returns it appears that sixty per cent (60%) or more of the votes cast at such election were in favor of and assented to the incurring of such indebtedness, then the board of directors may, by resolution, at such time or times as it deems proper, provide for the form and execution of such bonds and for the issuance of any part thereof, and may sell or dispose of the bonds so issued at such times or in such manner as it may deem to be to the public interest.

**History:** En. Sec. 22, Ch. 242, L. 1957; amd. Sec. 1, Ch. 335, L. 1969.

#### Amendments

The 1969 amendment substituted "sixty per cent (60%) or more" for "more than two-thirds."

#### Effective Date

Section 2 of Ch. 335, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 13, 1969.

**16-4526. Rate to pay operating expenses.** The board of directors in the furnishing of water, sewer service, other services and facilities, shall fix such rate, fee, toll, rent or other charge as will pay the operating expenses of the district, provide for repairs and depreciation of works owned or operated by it, pay the interest on any bonded debt, and, so far as possible, provide a sinking or other fund for the payment of the principal of such debt as it may become due.

Notwithstanding any other section of this chapter, or limitation imposed therein, and when the board of directors has applied for and received from the federal government any moneys for the construction, operation and maintenance of treatment services and works, the board of directors may adopt a system of charges and rates to require that each recipient of treatment works services pays its proportionate share of the costs of opera-



tion, maintenance and replacement, and to require industrial users of treatment works to pay the portion of the cost of construction of the treatment works which is allocable to the treatment of that industrial users' wastes.

**History:** En. Sec. 26, Ch. 242, L. 1957;  
amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 17,  
Ch. 455, L. 1975.

**Amendments**

The 1975 amendment added the second paragraph.

**16-4527. Commissioners to levy water taxes.** If from any cause, the revenues of the district shall be inadequate to pay the interest or principal of any bonded debt as it becomes due or any other expenses or claims against the district, then the board of directors must, at least fifteen (15) days before the first day of the month in which the board of commissioners of the county, or city and county, or counties in which such district is located, are required by law to levy the amount of taxes required for county or city and county purposes, furnish to the board or boards of commissioners, and to the auditor or auditors, respectively, an estimate in writing of the amount of money required by the district for the payment of the principal of or interest on any bonded debt as it becomes due, and of the amount of money required to establish reasonable reserve funds for either of said purposes, together with a description of the lands benefited thereby, as stated by the board of directors in the resolution declaring the necessity to incur such bonded indebtedness, and also of the amount of money required by the district for any other purpose in this section set forth, and the board of commissioners of such county or city and county must annually, at the time and in the manner of levying other county or city and county taxes and until any such bonded debt is fully paid, levy upon the lands so benefited and cause to be collected, the proportionate share to be borne by the land located in their county of a tax sufficient for the payment thereof to be known as the "\_\_\_\_\_ district bond tax"; and until all other expenses or claims are fully paid, levy upon all of the lands of the district and cause to be collected the proportionate share to be borne by the land located in their county of a tax sufficient for the payment thereof to be known as the "\_\_\_\_\_ district water and/or sewer tax".

When the amount of money required for any purpose in this section enumerated has been determined, each lot or parcel of land to be assessed shall be assessed with that part of the amount of money required which its area bears to the total area of all of the lands to be assessed; or said assessment may, at the option of the board or boards of county commissioners, be based upon the taxable valuation, as stated in the last completed county assessment roll, of the lots or parcels of land, exclusive of improvements thereon, within said district, in which case, each lot or parcel of land to be assessed shall be assessed with that part of the amount of money required which its taxable valuation bears to the total taxable valuation of all of the lands to be assessed. Provided however that where the district lies in more than one county, the same method of assessment shall be used by each board of county commissioners.

When the written estimate of the amount of money required has been delivered to the board of commissioners, said board shall give notice of its intention to levy and collect a tax sufficient for the payment thereof. Such notice shall be given:

(1) By posting notice thereof in five (5) public places within the county and within the boundaries of the lands upon which the tax is to be levied, and

(2) By publishing a copy of the notice once each week for 2 consecutive weeks in a newspaper published in each county wherein the district is located.

(3) By forwarding regular first class mail or registered mail, at least ten (10) days prior to the hearing provided for in paragraph (d) of this section, a copy of the notice addressed to the owners of taxable real property within the district as shown by the current assessment book on file in the office of the assessor of the county or counties the boundaries of which include taxable real property of the district.

The legislative assembly hereby finds, determines and declares that the giving of notice in accordance with paragraphs (1), (2) and (3) of this section is reasonably calculated to inform the owners of taxable real property located within the boundaries of the district of the hearing provided for in paragraph (d) of this section, and that the giving of any further notice is impracticable and is unnecessary to the assurance of due process of law to such property owners.

Such notice shall state:

(a) to (d) \* \* \* [Same as parent volume.]

At the time and place designated for said hearing any owner of property situated within the area to be assessed may appear and protest the levy of the tax or any matter pertaining thereto. All protests must be heard, considered and ruled upon by the board of commissioners. The board of commissioners may adjourn said hearing from time to time.

Where such tax is, for any reason, deemed unlawful by the person whose property is taxed, whether he has protested the same at the hearing above provided or not, he may pay the tax or the installments thereof under protest in the manner provided by section 84-4502, and thereupon, and within the time prescribed and in the manner provided by said section 84-4502, may commence an action to recover such tax, or installments, and in such action contest and litigate the payment of such tax on the same grounds and for the same reasons that he has stated in his written protest, and for no other reasons and on no other grounds; provided, that all of the provisions of said section 84-4502 for the retention or refunding of taxes paid under protest shall apply to taxes paid under protest under this section.

**History:** En. Sec. 27, Ch. 242, L. 1957; amd. Sec. 3, Ch. 258, L. 1959; amd. Sec. 1, Ch. 46, L. 1961; amd. Sec. 1, Ch. 68, L. 1963; amd. Sec. 9, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 5, Ch. 296, L. 1977.

#### **Amendments**

The 1977 amendment substituted "once each week for 2 consecutive weeks in a newspaper" in subdivision (2) for "for ten (10) consecutive days in a daily newspaper or in two (2) issues of a weekly newspaper."

**16-4533. Exclusion of territory—petition—contents—duties of secretary—hearing—order excluding lands.** Any territory, included within any district formed under the provisions of this act, and not benefited in any manner by such district, or its continued inclusion therein, may be excluded



therefrom by order of the board of directors of such district upon the verified petition of the owner or owners in fee of lands whose assessed value, with improvements, is in excess of one-half of the assessed value of all the lands, with improvements, held in private ownership in such territory. Said petition shall describe the territory sought to be excluded and shall set forth that such territory is not benefited in any manner by said district or its continued inclusion therein, and shall pray that such territory may be excluded and taken from said district. Such petition shall be filed with the secretary of the district and shall be accompanied by a deposit with such secretary of the sum of one hundred dollars (\$100.00), to meet the expenses of advertising and other costs incident to the proceedings for the exclusion of such territory, including the cost of recording a certified copy of the order hereinafter provided for, any unconsumed balance to be returned to the petitioner. Upon the filing of such petition with the secretary of the district he shall call a meeting of the board of directors of the district at a time not less than twenty-five (25) days nor more than fifty (50) days after the filing of the petition and cause a notice of the filing of such petition to be published once each week for 2 consecutive weeks in a newspaper of general circulation published in each county in which the district is situated. Such notice shall also state the date of the filing of such petition and that the same will come on for hearing before the board of directors of the district and shall state the time of the hearing and the place thereof, which shall be the regular meeting place of the board of directors of the district; provided, that the board may adjourn the hearing to a more convenient meeting place within the district. Any landowner or taxpayer within the district shall have the right to appear at said hearing, either in behalf of or in opposition to the granting of said petition. Said petition shall come on for hearing before the board of directors of the district at the time and place specified in the notice of hearing. If upon such hearing the board of directors determines that it is for the best interests of the district that the lands mentioned in the petition, or some portion thereof, be excluded from the district, or if it appears that such lands, or some portion thereof, will not be benefited by their continued inclusion in the district, then the board of directors shall make an order that such lands, or such portion thereof, be excluded from the district, such order to describe specifically the lands so excluded. From the time of the making of such order the lands so excluded shall be deemed to be no longer included in the district, but such order of exclusion shall not be taken to invalidate in any manner any taxes or assessments theretofore levied or assessed against the lands so excluded. A copy of such order of exclusion, certified to by the secretary of the district, shall be recorded in the office of the county recorder of the county or counties in which the district is situated and the record of such certified copy shall be deemed prima facie evidence of the exclusion from the district of the lands purporting to be excluded thereby.

**History:** En. Sec. 33, Ch. 242, L. 1957; amd. Sec. 12, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 6, Ch. 296, L. 1977.

#### **Amendments**

The 1977 amendment substituted "once

each week for 2 consecutive weeks in a newspaper" near the middle of the section for "for ten (10) consecutive days in a daily newspaper or in two (2) issues of a weekly newspaper within said district, if there be one, and if not, in some newspaper."



**16-4535. Elections may be combined.** The board of commissioners in its discretion may combine in one election the election on the formation of the district, the election of directors, and the election on incurring a bonded indebtedness, so that the electors of the district may vote on all of these matters on the same date and at the same time. If the elections are combined the board of commissioners shall so declare by resolution containing the provisions required by 16-4517. Candidates for the office of director shall be nominated in the manner required by 16-4507. Whenever the elections are combined, notice of the election, the names of the candidates and the details concerning the bonded indebtedness may be given in the manner prescribed by 16-4505 and 16-4507 or either of them.

**History:** En. 16-4535 by Sec. 1, Ch. 109, L. 1969.

**Effective Date**

Section 2 of Ch. 109, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 24, 1969.

**Title of Act**

An act allowing county water and sewer district elections to be combined.

## CHAPTER 47—ZONING DISTRICTS

**Section**

- 16-4702. Recommendations by county planning board and city-county planning board.
- 16-4703. Establishment of districts—regulations for land use—scope—uniformity.
- 16-4705. Procedure for adoption of regulations and boundaries.
- 16-4711. Interim zoning map or regulation.

**16-4702. Recommendations by county planning board and city-county planning board.** The board of county commissioners shall require the county planning board and the city-county planning board to recommend boundaries and appropriate regulations for the various zoning districts. The county planning board and the city-county planning board shall make written reports of their recommendations to the board of county commissioners, but such recommendations shall be advisory only. This section shall apply to either the county planning board or the city-county planning board where only one of these planning boards has been established.

**History:** En. Sec. 2, Ch. 246, L. 1963; amd. Sec. 17, Ch. 273, L. 1971.

second sentences; deleted "to act as a zoning commission" before "to recommend" in the first sentence; added the last sentence; and made minor changes in phraseology.

**Amendments**

The 1971 amendment inserted "county planning board and the" in the first and

**16-4703. Establishment of districts—regulations for land use—scope—uniformity.** (1) Within the unincorporated portions of a jurisdictional area which has been established under provisions of section 11-3830 or section 11-3830.2, the board of county commissioners may by resolution establish zoning districts and zoning regulations for all or parts of the jurisdictional area.

(2) to (4) \* \* \* [Same as parent volume.]

**History:** En. Sec. 3, Ch. 246, L. 1963; amd. Sec. 18, Ch. 273, L. 1971.

tion 11-3830 or section 11-3830.2" for "section 11-3825, and which portions are contiguous to a city" in subsection (1).

**Amendments**

The 1971 amendment substituted "sec-

**16-4704. Purposes of regulations—factors considered.****Unreasonable and Discriminatory**

Zoning of plaintiff's vacant lot and commercial building as part of a residential zone was unreasonable and discriminatory since the residential zone was contiguous with a commercial zone, contained only

one residence surrounded by commercial properties, and the board of county commissioners gave no reason for failing to include the property in the commercial zone. *Alden v. Board of Zoning Commrs.*, — M —, 528 P 2d 1320.

**16-4705. Procedure for adoption of regulations and boundaries.** The board of county commissioners shall observe the following procedures in the establishment or revision of boundaries for zoning districts and in the adoption or amendment of zoning regulations:

(1) Notice of a public hearing on the proposed zoning district boundaries and of regulations for the zoning district shall be published once a week for two (2) weeks in a newspaper of general circulation within the county. The notice shall state:

- (a) the boundaries of the proposed district;
- (b) the general character of the proposed zoning regulations;
- (c) the time and place of the public hearing;
- (d) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder.

(2) At the public hearing the board of county commissioners shall give the public an opportunity to be heard regarding the proposed zoning district and regulations.

(3) After the public hearing the board of county commissioners shall review the proposals of the planning board and shall make such revisions or amendments as it may deem proper.

(4) The board of county commissioners may pass a resolution of intention to create a zoning district and to adopt zoning regulations for the district.

(5) The board of county commissioners shall publish notice of passage of the resolution of intention once a week for two (2) weeks in a newspaper of general circulation within the county. The notice shall state:

- (a) the boundaries of the proposed district;
- (b) the general character of the proposed zoning regulations;
- (c) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder;

(d) that for thirty (30) days after first publication of this notice the board of county commissioners will receive written protests to the creation of the zoning district or to the zoning regulations from persons owning real property within the district whose names appear on the last completed assessment roll of the county.

(6) Within thirty (30) days after the expiration of the protest period the board of county commissioners may in its discretion adopt the resolution creating the zoning district and/or establishing the zoning regulations for the district; but if forty (40) percent of the freeholders within such district whose names appear on the last completed assess-

ment roll shall have protested the establishment of the district or adoption of the regulations, the board of county commissioners shall not adopt the resolution and no further zoning resolution shall be proposed for the district for a period of one (1) year.

**History:** En. Sec. 5, Ch. 246, L. 1963; amd. Sec. 19, Ch. 273, L. 1971.

ty commissioners" after "the board" in seven places; and made minor changes in punctuation.

#### **Amendments**

The 1971 amendment inserted "of coun-

### **16-4706. Board of adjustment—exceptions to regulations, etc.**

#### **Scope of Review**

Although scope of review on writ of certiorari is ordinarily limited to whether the inferior tribunal has exceeded its jurisdiction, further inquiry is permitted under provisions of subsections (8) and

(11) of this statute which grant the district courts a broader scope of review than the general Montana statutes pertaining to certiorari. Bryant Development Assn. v. Dagel, — M —, 531 P 2d 1320.

### **16-4709. Continuation of existing uses.**

#### **Unreasonable and Discriminatory**

Zoning of plaintiff's vacant lot and commercial building as part of a residential zone was unreasonable and discriminatory

under zoning plan that did not permit the continuance of nonconforming uses. Alden v. Board of Zoning Comms., — M —, 528 P 2d 1320.

**16-4711. Interim zoning map or regulation.** If a county is conducting, or in good faith intends to conduct studies within a reasonable time, or has held or is holding a hearing for the purpose of considering a master plan or zoning regulations or an amendment, extension, or addition to either pursuant to this chapter, the board of county commissioners in order to promote the public health, safety, morals, and general welfare may adopt as an emergency measure a temporary interim zoning map or temporary interim zoning regulation, the purpose of which shall be to classify and regulate uses and related matters as constitutes the emergency. Such interim resolution shall be limited to one (1) year from the date it becomes effective. The board of county commissioners may extend such interim resolution for one (1) year, but not more than one (1) such extension may be made.

**History:** En. 16-4711 by Sec. 20, Ch. 273, L. 1971.

#### **Notice Required**

This section is governed by the provisions of section 16-4705, providing for notice and hearing; thus, temporary interim resolution enacted in emergency session for the purpose of stopping completion of building was void. Bryant Development Assn. v. Dagel, — M —, 531 P 2d 1320; State ex rel. Christian, Spring, Seilbach & Associates v. Miller, — M —, 545 P 2d 660.

#### **Separability Clause**

Section 21 of Ch. 273, Laws 1971 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

## **CHAPTER 48—COUNTY PARKS**

### **Section**

**16-4801.** County board of park commissioners—qualifications and terms of commissioners—meetings—officers of board—accounts and records.



- 16-4801.1. Secretary to be appointed—designation of superintendent of parks.  
 16-4803. Receipt and disbursement of park funds—separate fund in treasury—liability of county restricted.  
 16-4804. Meetings of park commissioners—compensation of commissioners—contracts of board—failure of commissioner to qualify or perform.  
 16-4805. Auditing and allowance of claims against county.  
 16-4806. Discrimination in employment prohibited.  
 16-4808. Sale, lease or exchange of dedicated park lands.

**16-4801. County board of park commissioners—qualifications and terms of commissioners—meetings—officers of board—accounts and records.** There may be created in all counties a board of park commissioners, which shall be composed of the county commissioners and six (6) other persons appointed by county commissioners. The six (6) persons and three (3) commissioners so to be appointed shall have the same qualifications for the office of park commissioners as are required by section 11-710, R.C.M., 1947, for the office of county commissioners. The term of office of each park commissioner shall be three (3) years with and after the first Monday of May of the year in which he is appointed, and until his successor is appointed and qualified, save and except that two (2) of the commissioners first appointed shall hold office for the period of one (1) year, two (2) for two (2) years, and two (2) for three (3) years, with and after the first Monday of May, 1967, and until their successors are appointed and qualified. Such board of park commissioners shall constitute a department of the county government with the powers in this act provided. Before entering upon the discharge of his duties, each park commissioner shall take and subscribe to the oath provided by section 59-413, which oath shall be filed in the office of the county clerk and recorder.

On the first Monday of May in each year, said board of park commissioners shall meet and organize by electing one (1) of their number president, and one (1) of their number vice-president, who shall hold their offices respectively for the term of one (1) year. The president, and in his absence, the vice-president, shall preside at all meetings of the board, and shall countersign all warrants issued by the board.

**History:** En. Sec. 1, Ch. 306, L. 1967;  
 amd. Sec. 1, Ch. 290, L. 1971.

end of the second paragraph provisions relating to county clerk as ex officio clerk of the board, for previous text of which see parent volume.

**Amendments**

The 1971 amendment deleted from the

**16-4801.1. Secretary to be appointed—designation of superintendent of parks.** (1) The board of park commissioners shall have the power to employ a secretary, not a member of the board, who shall be the clerk of the board of park commissioners and attend all meetings of said board and keep correct minutes of all proceedings of said board in a book to be provided for that purpose by it, to be called "proceedings of the board of park commissioners of (entitled) county." It shall be the duty of the secretary to keep an accurate account of all transactions of said board, and to make and submit in writing to said board at its first meeting in May in each year a report under oath showing in detail all the receipts and disbursements made by the board during the previous calendar year, which report shall be in duplicate, and after being approved by said board, one

(1) of said duplicates shall be filed in the office of the county clerk and recorder, and one (1) in the office of the county treasurer, and, he shall perform such other services as the board from time to time shall require. In the absence of the secretary at any meeting held by the board, it shall designate one (1) of its members as clerk pro tem to keep the minutes of said meeting, which minutes shall be delivered to the secretary to be transcribed into the record book of said board. The minutes of said meeting in said record book, when approved by the board, shall be prima facie evidence of the matters and things there recited in any court in this state.

(2) The board of park commissioners shall have the power to employ a park superintendent, who may also be the secretary of the park board, and whose duties shall be of a managerial capacity, and who shall attend each regular meeting of the said board and report, either in writing or orally as the board may require, as to the activities, functions, and progress of whatever nature pertaining to the park lands and facilities over which he has supervision.

**History:** En. Sec. 5, Ch. 290, L. 1971.

**Effective Date**

Section 6 of Ch. 290, Laws 1971 pro-

vided the act should be in effect from and after its passage and approval. Approved March 11, 1971.

**16-4803. Receipt and disbursement of park funds—separate fund in treasury—liability of county restricted.** All moneys paid out by the park commissioners under the provisions of this act shall be by warrant drawn upon the county treasurer, which may be signed by the secretary and countersigned by the president, or, in his absence, by the vice-president of the board of park commissioners, or, upon approval by a majority of the members of the board of park commissioners at a regular meeting of the board at which a quorum are in attendance and voting, and with due notice and report being made to the board of county commissioners, payments so authorized may be made by warrant drawn upon the county treasurer signed by the chairman of the board of county commissioners and countersigned by the county clerk and recorder. All moneys raised by tax for park purposes, or received by the board of park commissioners for the sale of hay, trees, plants, or from the use of or leasing of lands and facilities shall be paid into the county treasury, and the county treasurer shall keep all such moneys in a separate fund to be known as the "park fund." Such board shall have no power to incur liability on behalf of the county in excess of moneys on hand in, or taxes actually levied for, said park fund.

**History:** En. Sec. 3, Ch. 306, L. 1967; amd. Sec. 2, Ch. 290, L. 1971.

**Amendments**

The 1971 amendment substituted "may

be signed by the secretary \* \* \* county clerk and recorder" for "shall be signed by the county clerk \* \* \* park commissioners" in the first sentence.

**16-4804. Meetings of park commissioners—compensation of commissioners—contracts of board—failure of commissioner to qualify or perform.** The board of park commissioners shall hold an annual meeting on the first Monday of May, and a meeting at least once in each month in each



year, at such times as the board shall by rule prescribe. Special meetings may also be held at the call of the president, or, in his absence, the vice-president, upon giving to each member of said board at least twenty-four (24) hours' notice in writing of the time and place of holding such meeting. A member of the board by his appearance at a special meeting shall waive the requirement of written notice. A majority of the entire board shall be necessary to constitute a quorum for the transaction of the business of said board. No park commissioner shall receive compensation for his services rendered under the provisions of this act, but the actual and necessary expense incurred by any member of the board while acting under the orders of the board in the transaction of any business in its behalf may be paid upon being allowed and audited by the board. No park commissioner, directly or indirectly, shall be interested in, or benefit by, any contract made by the board or by its authority, or in the furnishing of any supplies for the use of the board. Any park commissioner who shall refuse or neglect, for the period of three (3) consecutive months, to attend the meetings of said board without leave of absence from said board, or who shall fail for the period of twenty (20) days from and after his appointment to qualify as in this act provided, shall be deemed to have vacated his office, and thereupon his successor may be appointed. All contracts made by said board shall be in the name of the county, and shall be signed by the president, or, in his absence, by the vice-president, of said board, or, upon approval by a majority of the members of the board of park commissioners at a regular meeting of the board at which a quorum are in attendance and voting, and with due notice and report being made to the board of county commissioners, such contracts may be signed by the chairman of the board of county commissioners and attested by the county clerk and recorder.

**History:** En. Sec. 4, Ch. 306, L. 1967;      dent, or, in his absence \* \* \* county  
amd. Sec. 3, Ch. 290, L. 1971.      clerk and recorder" for "county clerk  
\* \* \* of said board" in the last sentence.

#### Amendments

The 1971 amendment substituted "presi-

**16-4805. Auditing and allowance of claims against county.** The board of park commissioners shall, at its first regular meeting in each month, audit and allow all just claims against the county, liability for which shall have been incurred by said board; but no claim shall be audited or paid until an itemized account of such claim in writing, signed by the claimant or his or its authorized agent, shall have been filed in the office of the secretary of said board; provided, that no order or resolution providing for the payment or expenditure of money, or creating an obligation in excess of the sum of twenty-five dollars (\$25), or authorizing the making of any contract, shall be passed or adopted except by a ye and nay vote, which vote shall be recorded in full in the minutes of the secretary.

**History:** En. Sec. 5, Ch. 306, L. 1967;      by the claimant \* \* \* of said board" for  
amd. Sec. 4, Ch. 290, L. 1971.      "verified by the oath \* \* \* said board"

#### Amendments

The 1971 amendment substituted "signed      before the proviso; and substituted "of  
the secretary" for "by the clerk" at the  
end of the section.



**16-4806. Discrimination in employment prohibited.** No contract of employment may be entered into except in compliance with the Equal Opportunity Act of 1966 and executive order of 1966, providing that there be no discrimination in the employment of persons because of race, religion, creed, color, or national origin.

**History:** En. Sec. 6, Ch. 306, L. 1967; amd. Sec. 3, Ch. 38, L. 1977.

**Amendments**

The 1977 amendment substituted "may"

for "will" after "No contract of employment"; inserted "religion" after "because of race"; and made minor changes in phraseology and punctuation.

**16-4808. Sale, lease or exchange of dedicated park lands.** (1) For the purposes of this act, lands dedicated to the public use for park or playground purposes under section 11-3864, or a similar statute, or pursuant to any instrument not specifically conveying land to be a governmental unit other than a county, are deemed to be county lands. A county may not sell, lease or exchange lands dedicated for park or playground purposes except as provided under this act.

(2) Prior to selling, leasing, or exchanging any county land dedicated to public use for park or playground purposes, a county shall:

(a) compile an inventory of all public parks and playgrounds within the county;

(b) prepare a comprehensive plan for the provision of outdoor recreation and open space within the county;

(c) determine that the proposed sale, lease, or exchange furthers or is consistent with the county's outdoor recreation and open space comprehensive plan;

(d) publish notice of intention to sell, lease or dispose of such lands, giving the people of the county opportunity to be heard regarding such action;

(e) if the land is within an incorporated city or town, secure the approval of the governing body thereof for the action; and

(f) comply with any other applicable requirements under this act.

(3) Any revenue realized by a county from the sale, exchange or disposal of lands dedicated to public use for park or playground purposes shall be paid into the park fund and used in the manner prescribed in section 11-3864 for cash received in lieu of dedication.

**History:** En. 16-4808 by Sec. 5, Ch. 540, L. 1975.

**Separability Clause**

Section 6, Ch. 540, Laws 1975 read "It is the intent of the legislature that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is

invalid in one (1) or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

**Repealing Clause**

Section 7, Ch. 540, Laws 1975 read "Sections 84-4193, 84-4194, and 84-4198, R. C. M. 1947, are repealed."

**CHAPTER 50—ALTERNATIVE FORMS OF COUNTY GOVERNMENT**

**Section**

16-5001. Alternative forms of county government authorized.

16-5002. Optional forms.

- 16-5003. Initiation by county commissioners—petition—resolution—election date—notice.
- 16-5004. Adoption of optional form—when effective—disapproval.
- 16-5005. Discontinuance.
- 16-5006. Adoption of optional form not to affect present acts—transfer of powers.
- 16-5007. Optional form to elect county commissioners at large or by districts—number of members.
- 16-5008. Election of board at large—procedure for change in number of members—terms of office.
- 16-5009. Election of board by districts.
- 16-5010. Rules of board—meetings and records to be public—majority vote required.
- 16-5011. Organization of board.
- 16-5012. Powers vested in board of county commissioners.
- 16-5013. Specific powers and duties of the board.
- 16-5014. Elected county official form.
- 16-5015. County commissioner form.
- 16-5016. Manager form.
- 16-5017. Elected county executive.
- 16-5018. Performance of duties in absence of county executive or manager.
- 16-5019. Compensation established by county board—manager—executive.

**16-5001. Alternative forms of county government authorized.** The electors of any county may adopt an alternative form of county government authorized by the provisions of this act. Upon adoption as provided by such act, said alternative form of government shall take the place of the form of government then existing in such county, and the sections of this act, applicable to the adopted alternative form of government, shall be controlling in such county as to all matters to which they relate, and other provisions of the general laws of the state shall be operative therein only in so far as they are not inconsistent with the aforesaid provisions.

**History:** En. Sec. 2, Ch. 123, L. 1973.

#### **Title of Act**

An act to implement article XI, section 3, of the 1972 Montana constitution by providing for optional forms of county government; procedures to adopt and initiate an optional form of county govern-

ment; adding county attorney and clerk of district court to the list of offices that may be consolidated; deleting the non-succession provision for county treasurer; amending sections 16-901, 16-2406 and 16-2412, R. C. M. 1947; and repealing sections 16-2403, 16-2407 and 16-3901 through 16-3923, R. C. M. 1947.

**16-5002. Optional forms.** An optional form of county government shall include the elected county official form, the county commissioner form, the manager form and the elected county executive form.

**History:** En. Sec. 3, Ch. 123, L. 1973.

**16-5003. Initiation by county commissioners — petition — resolution — election date — notice.** The board of county commissioners of any county may, by a two-thirds ( $\frac{2}{3}$ ) vote of the board, or shall, within thirty (30) days upon receipt of a petition signed by fifteen per cent (15%) of the electors of the county as determined by the number of votes cast therein for the office of governor at the last preceding gubernatorial election, by resolution submit in a referendum to the electors of the county the question of adopting a new form of county government authorized by this act. If more than one optional form of county government is presented to the county commissioners by petition a primary election shall be held to determine the form to be submitted to the electors in a referendum. It shall be the duty of the board of county commissioners to submit the question at the next regular election or call a special election for the purpose. If a special

election is called it shall be held not more than ninety (90) days nor less than sixty (60) days from the passage of the resolution, but not within thirty (30) days of any general election.

(1) The question submitted shall be worded: "Shall the county of ..... adopt the form of county government known as the ..... form." (name of form)

(2) It shall be the duty of the board of county commissioners to publish a notice of the referendum in a daily paper twice a week for a period of three (3) consecutive weeks, or in case there is no daily paper of wide circulation in the county, then in a weekly paper for four (4) consecutive weeks.

**History:** En. Sec. 4, Ch. 123, L. 1973.

**16-5004. Adoption of optional form—when effective—disapproval.** If a majority of the votes cast on the question of adopting an optional form of county government is in the affirmative, it shall go into effect at a date designated in the petition or resolution; provided, that no elected official then in office, whose position will no longer be filled by popular election, shall be retired prior to the expiration of his term of office, but from and after the establishment of the optional form of county government, his duties shall be such duties as are assigned to him by the person or body administering the optional form of government. If a majority of the voters disapprove, the existing form shall be continued and no new referendum may be held during the next two (2) years following the date of disapproval.

**History:** En. Sec. 5, Ch. 123, L. 1973.

**16-5005. Discontinuance.** A proposition to discontinue an optional form of county government established under this act or to adopt another optional form of county government pursuant to this act may be submitted to the electors of the county at any general election in the manner provided for the submission of an optional form of county government under section 4 [16-5003] of this act.

**History:** En. Sec. 6, Ch. 123, L. 1973.

**16-5006. Adoption of optional form not to affect present acts—transfer of powers.** The adoption or discontinuance of an optional form of county government in any county as provided in this act shall not affect any act done, ratified, or affirmed, or any contract or other right or obligation other than contracts for personal services, accrued or established, or any action, prosecution, or proceeding, civil or criminal, pending at the time such change in form of government takes effect; nor shall the adoption or discontinuance of such form of county government affect such causes of action, prosecutions, or proceedings existing at the time it takes effect; but such rights shall attach to, and actions, prosecutions, or proceedings may be prosecuted and continued, or instituted and prosecuted against, by, or before the department having jurisdiction or power of the subject matter to which such action, prosecution, or proceedings pertains. All rules, regulations, and orders lawfully promulgated prior to such adoption shall continue



in force and effect until amended or rescinded in accordance with the sections of this act.

On the effective date of the adoption or discontinuance of an optional form of county government causing a transfer of rights, duties, and powers from one department or office to another, all books, records, papers, documents, property, real and personal, funds, appropriations and balances of appropriations, and pending business in any way pertaining to such rights, powers, and duties shall be similarly transferred.

**History:** En. Sec. 7, Ch. 123, L. 1973.

**16-5007. Optional form to elect county commissioners at large or by districts—number of members.** (1) Any optional form of county government shall include a board of county commissioners, elected either at large as provided in section 9 [16-5008] of this act, or by districts as provided in section 10 [16-5009] of this act. The method of election shall be determined by inclusion of the method in the optional form adopted pursuant to section 3 [16-5002] of this act.

(2) The board of county commissioners shall consist of such number of members as shall be determined by inclusion of either three (3) or five (5) members in the optional form adopted pursuant to section 3 [16-5002] of this act.

**History:** En. Sec. 8, Ch. 123, L. 1973.

**16-5008. Election of board at large—procedure for change in number of members—terms of office.** (1) Under all optional forms of county government whereby the entire board of county commissioners is elected at large there shall be a board of county commissioners who shall have the qualifications and shall be nominated and elected as provided by general law, except as otherwise provided for in this section.

(2) If the electors of a county approve a proposition to adopt an optional form of county government under this act and thereby adopt a different size of the board of county commissioners, the change in membership shall be effected as follows:

(a) Whenever the number of members of the board is increased, there shall be elected at the regular state election next following the adoptions of such provision, a sufficient number of county commissioners to bring the total membership of the board up to the number fixed. County commissioners shall first serve a term of six (6) years, except the candidates first elected under the provisions of this section.

(b) Whenever the number of members of the board is decreased, the optional number of county commissioners adopted under this act shall be effective as to the commissioner with the least time left on his term on the first Monday in January following the next regular state election and as to the other half of the decrease on the first Monday in January two (2) years later. The latter decrease in board size shall also be determined by the least time left on his term. Should two (2) commissioners have the same amount of term left to serve, then by lot.

(3) The term of office of county commissioners shall be six (6) years

except as provided in this subsection. If the optional form as adopted provides for no change in size of the board of county commissioners, county commissioners shall continue to be elected for six (6) year terms. If the optional form as adopted provides for an increased membership on the board of county commissioners as provided in this act, the additional members shall be elected to the board at the first regular state election subsequent to the adoption of the alternative form.

(4) If the first election under an optional form of county government provided for in this act occurs in a year in which one county commissioner is to be elected under the former law and the optional form as adopted provides for an expansion of the board to five (5) commissioners, there shall be elected for a staggered term, two (2) commissioners for a six (6) year term and one (1) commissioner for a four (4) year term, as provided in this act.

(5) At all succeeding elections, after the first regular state election subsequent to adoption of an optional form, all members of the board of county commissioners shall continue to be elected for six (6) year terms.

**History:** En. Sec. 9, Ch. 123, L. 1973.

**16-5009. Election of board by districts.** (1) Under all optional forms of county government whereby any members of the board of county commissioners are elected by districts there shall be a board of county commissioners who shall be nominated and elected as provided by general law, except as otherwise provided for in this section.

(2) The board shall consist of such number of members as provided in the proposition for the optional form that has been adopted.

(3) The division of the county into districts for county commissioners shall conform to the constitutional standards for division of the state into districts for election of members of the legislature. If the proposition for the optional form adopted provides that the county commissioners shall be elected by districts, the board of county commissioners shall, commencing in the first election under an optional form of county government, divide the county into county commissioner districts using the most recent decennial federal census. The districts shall be reapportioned as soon as possible after each decennial federal census becomes available.

**History:** En. Sec. 10, Ch. 123, L. 1973.

**16-5010. Rules of board—meetings and records to be public—majority vote required.** The board of county commissioners shall determine its own rules and order of business and cause a record of its proceedings to be kept. All meetings of the board must be public, and the books, records, and accounts must be kept at the office of the clerk, open at all times for public inspection, free of charge. No action of the board shall be valid or binding unless adopted by the affirmative vote of a majority of the members elected to the board.

**History:** En. Sec. 11, Ch. 123, L. 1973.

**16-5011. Organization of board.** The board of county commissioners shall organize on the first Monday of each year, except when the first Mon-

day of the year falls on a holiday then the board shall organize on the first Tuesday of each year, by the election of one of its members as chairman. The chairman must preside at all meetings of the board, and in case of his absence or inability to act, the members present must, by an order, select one of their number to act as chairman temporarily. Any member of the board may administer oaths to any persons concerning any matter submitted to them or connected with their powers or duties.

**History:** En. Sec. 12, Ch. 123, L. 1973.

**16-5012. Powers vested in board of county commissioners.** The powers of a county as a body politic and corporate shall be vested in a board of county commissioners and exercised in the manner provided in this act.

**History:** En. Sec. 13, Ch. 123, L. 1973.

**16-5013. Specific powers and duties of the board.** The board of county commissioners shall:

(1) be the policy-determining body of the county, and except as otherwise provided by law, shall be vested with all the powers of the county, including power to levy taxes and to appropriate funds;

(2) have the power to create, organize, alter, consolidate or abolish administrative units and transfer and assign their functions, powers and duties;

(3) have all powers and duties vested in or imposed upon it by the general law, except as otherwise provided for in this act;

(4) provide for the borrowing of money in anticipation of the collection of taxes and revenues for the current fiscal year;

(5) acquire, construct, maintain, administer, rent, and lease property including buildings and other public improvements as provided by law;

(6) co-operate or join by contract pursuant to this act any city, county, state or political subdivision or agency thereof, or with the United States or any agency thereof, for the planning, development, construction, acquisition, or operation of any public improvement or facility, or for a common service; and may provide the terms upon which the county shall perform any of the services and functions of any municipality or political subdivision in the county;

(7) accept, in the name of the county, gifts, devises, bequests, and grants-in-aid from any person, firm, corporation, city, county, state, or political subdivision or agency thereof, or from the United States or any agency thereof;

(8) request periodic or special reports by the county executive, county manager, elected officers, and administrative officers and bodies, and may require their attendance upon its meetings;

(9) designate the maximum number of assistants, deputies, clerks, and other persons that may be employed in each of the offices and departments of the county;

(10) authorize the county executive or manager to employ experts and consultants in connection with the administration of the affairs of the county;



(11) establish procedures governing the making of county contracts and the purchasing of county supplies and equipment by competitive bidding;

(12) exercise control over expenditures by all county officials and promulgate and execute an allotment schedule allocating annual appropriation for any county government purpose by item on either a monthly or quarterly basis;

(13) by ordinance or resolution make any rule, or act in any manner provided by general law.

**History:** En. Sec. 14, Ch. 123, L. 1973.

**16-5014. Elected county official form.** (1) Elected county official form defined. The elected county official form of county government shall be that form in which the government is administered by a board of county commissioners and the following subordinate officials may be elected: a clerk and recorder, a clerk of district court, a county attorney, a sheriff, a treasurer, a surveyor, a county superintendent of schools, an assessor, a county auditor, a coroner, and a public administrator.

(2) Modification of regular forms. There may be modification of the elected county official form adopted as hereinafter provided. The number of elected officials may vary by the right of the commissioners to consolidate or combine any two (2) or more offices to co-operate with other units of local government in the sharing of any official.

(3) All the general laws of the state of Montana concerning this form of county government shall apply to the elected county official form of county government, except as provided for in this act.

**History:** En. Sec. 15, Ch. 123, L. 1973.

**16-5015. County commissioner form.** County commissioner form defined. The county commissioner form of county government shall be that form in which the government is administered by a board of county commissioners. The county commissioners may appoint those county officials as may be necessary for county operations and establish an adequate compensation plan for the duties required of each official. Those officials shall be appointed with regard to merit only and need not be a resident of the county prior to the time of their appointment. Under this form of county government the board of county commissioners shall have the power to create, organize, alter, consolidate or abolish administrative units of county government and transfer and assign their functions, powers and duties.

**History:** En. Sec. 18, Ch. 123, L. 1973.

**16-5016. Manager form.** (1) Manager appointed or designated. The board of county commissioners may appoint a county manager who shall be the administrative head of the county government which the board has the authority to control. He shall be appointed with regard to merit only, and he need not be a resident of the county at the time of his appointment. In lieu of the appointment of a county manager, the board may impose and confer upon the chairman of the board of county commissioners the duties and powers of a manager, as hereinafter set forth, and under

such circumstances said chairman shall be considered a full-time chairman. Or the board may impose and confer such powers and duties upon any other officer or agent of the county who may be sufficiently qualified to perform such duties and the compensation paid to such officer or agent may be revised or adjusted in order that it may be adequate compensation of all the duties of his office. The term "manager" herein used shall apply to such chairman, officer, or agent in the performance of such duties.

(2) Duties of the manager. It shall be the duty of the county manager:

(a) to see that all orders, resolutions, and regulations of the board are faithfully executed;

(b) to attend all the meetings of the board and recommend such measures for adoption as he may deem expedient;

(c) to make reports to the board from time to time upon the affairs of the county, and to keep the board fully advised as to the financial condition of the county and its future financial needs;

(d) to appoint, with the approval of the board, such subordinate officers, agents, and employees for the general administration of county affairs as considered necessary; and

(e) to perform such other duties as may be required of him by the board.

**History: En. Sec. 19, Ch. 123, L. 1973.**

**16-5017. Elected county executive.** (1) Elected county executive form defined. The elected county executive form of government shall be that form in which the government is administered by a single county official, elected at large by the qualified voters of the county. The elected county executive shall be elected in the same manner as the other county officials. The board of county commissioners shall act as the legislative body of the county under this form of county government. The elected county executive shall be responsible for the administration of all departments of the county government. Qualifications for the office of elected county executive shall be the same as those for the board of county commissioners. Compensation for the elected county executive shall be established by the board, commensurate with and comparable to the compensation for a like service in commercial business.

(2) Duties of the elected county executive. It shall be the duty of the elected county executive:

(a) to see that all the orders, resolutions, and regulations of the board are faithfully executed;

(b) to attend all the meetings of the board and recommend such measures for adoption as he may deem expedient;

(c) to make reports to the board from time to time upon the affairs of the county, and to keep the board fully advised as to the financial condition of the county and its future financial needs;

(d) to appoint, with the approval of the board, such subordinate officers, agents, and employees for the general administration of county affairs as considered necessary; and

(e) to perform such other duties as may be required of him by the board.

(3) Specific powers of the elected county executive. The powers of the elected county executive shall include the power to veto any ordinance or resolution adopted by the board of county commissioners. A veto by the county executive may apply to all or any items of an ordinance appropriating money. Certification of a veto must be made by the county executive within ten (10) days of its adoption by the board of county commissioners, and the board of county commissioners may override the veto by a two-thirds ( $\frac{2}{3}$ ) vote of all its members. Under the elected executive plan an ordinance or resolution shall become effective upon approval by the county executive, expiration of such ten (10) days without approval or veto, or the overriding of a veto.

History: En. Sec. 20, Ch. 123, L. 1973.

**16-5018. Performance of duties in absence of county executive or manager.** In case of absence or disability of the county executive or manager as determined by the board of county commissioners, his duties shall be performed during his absence or disability by whomsoever the board of county commissioners designates by resolution.

History: En. Sec. 21, Ch. 123, L. 1973.

**16-5019. Compensation established by county board—manager—executive.** (1) The board of county commissioners shall establish a schedule of compensation for officers and employees which shall provide uniform compensation for like service, and such compensation shall be commensurate with and comparable to the compensation for a like service in commercial business. The schedule of compensation may establish a minimum and maximum for any class, and an increase in compensation, with the limits provided for by any class, may be granted at any time by the county manager, county executive or other appointing authority upon the basis of efficiency and seniority records. None of the provisions of the law of this state with regard to the appointment or compensation of deputy county officers shall apply hereto.

(2) In the manager plan, the compensation of the county manager shall be fixed by the board of county commissioners.

(3) In the elected county executive plan, the compensation of the county executive shall be fixed by the board of county commissioners one (1) year prior to the county executive's term of office. In the first year, after adopting the county executive form of county government, the compensation for the county executive shall be one hundred fifty per cent (150%) of that amount established for a member of the board of county commissioners in that county, figured on the basis of the commissioners working full time.

History: En. Sec. 22, Ch. 123, L. 1973.

**Repealing Clause**

Section 23 of Ch. 123, Laws 1973 read

"Sections 16-2403, 16-2407 and 16-3901 through 16-3923, R. C. M. 1947, are repealed."



## CHAPTER 51—LOCAL GOVERNMENT STUDY COMMISSIONS

## Section

- 16-5115.1. Existing forms of local government.
- 16-5115.3. Consolidation.
- 16-5115.11. General transition.
- 16-5115.12. Transition—officers and employees.
- 16-5115.13. Election of new officials.
- 16-5115.14. Organization of the commission.

**16-5101 to 16-5115. Terminated.****Termination**

Sections 16-5101 to 16-5115 (Secs. 1 to 15, Ch. 222, L. 1974; Secs. 1 to 3, Ch. 513, L. 1975), providing for local government

study commissions, terminated on June 30, 1977, pursuant to Sec. 17, Ch. 222, Laws 1974 and Sec. 23, Ch. 513, Laws 1975.

**16-5115.1. Existing forms of local government.** (1) For the purpose of determining the statutory basis of existing units of local government under this act, each unit of local government organized under the general statutes authorizing the municipal mayor-council form of government which does not adopt a new form shall be governed after May 2, 1977 by the following sections of section 47A-3-203:

- (1)
- (2)
- (3) (a) (ii)
- (3) (b) (iii)
- (3) (c) (ii)
- (3) (d) (ii)
- (3) (e) (ii)
- (3) (f) (i)
- (3) (g) (ii)
- (3) (h) (i)
- (3) (i) (i)
- (3) (j) (iii)
- (3) (k) (ii)
- (3) (l) (ii)
- (4) (a)

This form has terms of four (4) years for all elected officials. The size of the commission shall be established by ordinance, but it may not exceed twenty (20) members.

(2) For the purpose of determining the statutory basis of existing units of local government after May 2, 1977 when the new local government code will become effective, each unit of local government organized under the general statutes authorizing the municipal commission-manager form of government shall be governed by the following sections of section 47A-3-204:

- (1)
- (2)
- (3)
- (4)
- (5)
- (6) (a) (iii)

- (6) (b) (i)
- (6) (c) (ii)
- (6) (d) (ii)
- (6) (e) (ii)
- (6) (f) (ii)
- (6) (g)
- (7) (a)

This form has terms of four (4) years for all elected officials. The size of the commission shall be established by ordinance, but it may not exceed five (5) members.

(3) For the purpose of determining the statutory basis of existing units of local government after May 2, 1977 when the new local government code will become effective, each unit of local government organized under the general statutes authorizing the elected county official form of government shall be governed by the following sections of section 47A-3-205:

- (1)
- (2) (a) (iii)
- (2) (b) (i)
- (2) (c) (i)
- (2) (d) (ii)
- (2) (e) (ii)
- (2) (f) (ii)
- (2) (g)
- (3) (a) (i)
- (3) (b) (i)
- (3) (c) (i)
- (3) (d) (i)
- (3) (e) (i)
- (3) (f) (i)
- (3) (g) (i)
- (3) (h) (i)
- (3) (i) (i)
- (3) (j) (i)
- (3) (k) (i) if the county has elected an auditor.
- (3) (k) (vi) if the county has not elected an auditor.
- (4)

This form has terms of four (4) years for all elected officials except commissioners who are elected to six (6) year terms. The commission consists of three (3) members.

(4) For the purpose of determining the statutory basis of existing units of local government after May 2, 1977 when the local government code will become effective, each unit of local government organized under the general statutes authorizing the county manager form of government shall be governed by the following sections of section 47A-3-204:

- (1)
- (2)
- (3)
- (4)

- (5)
- (6) (a) (ii)
- (6) (b) (i) or (ii)
- (6) (c) (ii)
- (6) (d) (i)
- (6) (e) (ii)
- (6) (f) (ii)
- (6) (g)

Commissioners are elected to six (6) year terms. The size of the commission shall be established by ordinance, but it may not exceed five (5) members.

**History:** En. 16-5115.1 by Sec. 4, Ch. 513, L. 1975.

#### **Title of Act**

An act to further implement article XI, sections 3, 5, 6, and 9 of the 1972 Montana constitution by providing procedures by

which local government study commissions may formulate recommendations and submit recommendations to the voters; providing for an immediate effective date; providing a termination date; and amending sections 16-5102, 16-5105, and 16-5113, R. C. M. 1947.

### **16-5115.2. Terminated.**

#### **Termination**

Section 16-5115.2 (Sec. 5, Ch. 513, L. 1975), relating to submission by a study commission to electors of an alternative

form of local government, terminated on June 30, 1977, pursuant to Sec. 23, Ch. 513, Laws 1975, as amended by Sec. 12, Ch. 477, Laws 1977.

**16-5115.3. Consolidation.** (1) A county and a city or town within the county may unite to form a single unit of local government under the provisions of this section.

(2) An alternative form of government, including a charter form, for a consolidated unit of government may be submitted to the voters only by those study commissions that have co-operated under section 16-5106. A majority vote by each of the affected study commissions is required for the submission of an alternative form of government for a consolidated unit of local government. The affected study commissions submitting a consolidated form shall issue a single joint report and proposal.

(3) An alternative form of government for a consolidated unit of local government does not need to include more than one municipality. A municipality may not be included unless the local government study commission of that municipality participates in the co-operative study and unless its study commission, by a majority vote, approves the proposed alternative plan for the consolidated government.

(4) Study commissions proposing consolidation shall prepare, adopt, and submit to the voters a consolidation plan, in addition to the alternative form of government. If the commission proposes a charter, the plan may be included in the charter.

The consolidation plan shall:

(a) Provide for adjustment of existing bonded indebtedness and other obligations in a manner which will provide for a fair and equitable burden of taxation for debt service.

(b) Provide for establishment of service areas.



(c) Provide for the transfer or other disposition of property and other rights, claims, assets, and franchises of local governments consolidated under the alternative form.

(d) Provide the official name of the consolidated unit of local government.

(e) Provide for the transfer, reorganization, abolition, absorption, adjustment of boundaries and may provide a method for adjusting the boundaries of all existing boards, bureaus, commissions, agencies, special districts, and political subdivisions of the consolidated governments. Or the plan may grant the legislative body of the consolidated government the authority to transfer, reorganize, adjust boundaries, abolish, or absorb, and provide a method for adjusting the boundaries of such entities with or without referendum requirements. This section shall not apply to excluded municipalities, school districts, conservancy districts, drainage districts, irrigation districts, soil and water conservation districts, or livestock districts.

(f) Include other provisions which the study commission elects to include and which are consistent with state law.

(5) On its effective date, the alternative form of government and consolidation plan operate to dissolve all local governments within the area of consolidation in accordance with their provisions. On the effective date the separate corporate existence of the county and of each participating city and/or town shall be consolidated and merged into one local government unit under the name selected, designated, and adopted as provided in this chapter, and the consolidated local government shall thereupon succeed to, possess, and own all of the property and assets of every kind and description and shall, except as otherwise provided, become responsible for all of the obligations and liabilities of the county, cities, and towns so consolidated and merged. As a political subdivision of the state, such consolidated unit of local government shall have the status of a county and an incorporated municipality for all purposes and shall replace and be the successor of the county and any city or town.

(6) A consolidated local government shall have and may exercise all powers that are now, or hereafter may be, conferred on counties, cities, or towns by the constitution and laws of the state. The consolidated local government may levy all taxes which counties, cities, and towns are authorized to levy.

(7) Within two years after ratification of the consolidation, the governing body of the consolidated unit of local government shall revise, repeal, or reaffirm all rules, ordinances, and resolutions in force within the participating county, cities, and towns at the time of consolidation. Each rule, ordinance, or resolution, in force at the time of consolidation, shall remain in force within the former geographic jurisdiction until superseded by action of the new governing body. Ordinances and resolutions relating to public improvements to be paid for in whole or in part by special assessments, may not be repealed.

(8) All provisions of law authorizing contributions of any kind, in money or otherwise, from the state or federal government to counties and

cities shall remain in full force with respect to a consolidated local government.

**History:** En. 16-5115.3 by Sec. 6, Ch. 513, L. 1975.

**16-5115.4 to 16-5115.10. Terminated.**

**Termination**

Sections 16-5115.4 to 16-5115.10 (Secs. 7 to 13, Ch. 513, L. 1975), relating to duties of local government study commis-

sions, terminated on June 30, 1977, pursuant to Sec. 23, Ch. 513, Laws 1975, as amended by Sec. 12, Ch. 477, Laws 1977.

**16-5115.11. General transition.** (1) If the electors disapprove the proposed new form of local government, the local government shall retain its existing form as specified in section 16-5115 and the report of the commission.

(2) (a) A new alternative form of local government and/or consolidation plan approved by the voters, shall take effect on May 2, 1977, except as otherwise provided in this act and any charter or consolidation plan. The electors of any unit of local government which has adopted a new alternative form of local government may not vote on the question of changing the form of local government until three (3) years after the new alternative form of local government became effective, but the voters may vote on amendments to the alternative form or service or functional transfer.

(b) Provisions creating offices and establishing qualifications for office and any apportionment plan shall become effective December 1, 1976 for the purpose of electing officials.

(3) (a) A copy of the existing or proposed "plan of government" ratified by the voters and any "apportionment plan" or "consolidation plan" shall be certified by the chairman of the study commission and filed by the study commission by December 1, 1976 with each of the following authorities: secretary of state; attorney general; department of intergovernmental relations; state commission on local government; clerk of the city, town, or county; and clerk of the district court.

(b) The approved plan filed with the secretary of state shall be the official plan and shall be a public record open to inspection of the public and judicially noticeable by all courts.

(4) All ordinances in effect at the time the new form of government becomes effective shall continue in effect until repealed or amended in the manner provided by law. Consolidated governments are governed by the provisions of section 16-5116.

(5) The adoption of a new form of government shall not affect the validity of any bond, debt, contract, obligation, or cause of action accrued or established under the prior form of government.

(6) If the proposed new form of local government is adopted the study commission shall prepare an advisory plan for orderly transition to a new form of local government. The transition plan may propose necessary ordinances, plans for consolidation of services and functions, and a plan for reorganizing boards, bureaus, departments, and agencies.

(7) The legislative body of a local government may enact and enforce ordinances to bring about an orderly transition to the new plan of government, including transfers of powers, records, documents, properties, assets, funds, liabilities, or personnel which are consistent with the approved plan and necessary or convenient to place it into full effect. Where any question arises concerning the transition which is not provided for herein, the legislative body may provide for such transition by ordinance, rule, or resolution not inconsistent with this act.

History: En. 16-5115.11 by Sec. 14, Ch. 513, L. 1975.

**16-5115.12. Transition—officers and employees.** (1) The members of the board of county commissioners or the members of the council or commission of a city or town, holding office on the date a new alternative form of government is adopted by the qualified electors of the local government unit, shall continue in office and in the performance of their duties until the commission authorized by the new alternative forms has been elected and qualified, whereupon the prior commission or council shall be abolished.

(2) All other employees holding offices or positions, whether elective or appointive, under the government of such county, city, or town on May 2, 1977, shall continue in the performance of the duties of their respective offices and positions until provision is made for the performance or discontinuance of such duties, or the discontinuance of such offices or positions.

History: En. 16-5115.12 by Sec. 15, Ch. 513, L. 1975.

**16-5115.13. Election of new officials.** (1) No primary or general election shall be held in 1976 for the election of county officials. The primary and general election for electing city, town, and county officials shall be rescheduled as provided in this section.

(2) The board of county commissioners, city or town council or commission shall order a special local government primary election to be held February 8, 1977 and local government general election on April 5, 1977 for the purpose of electing local government officials.

(3) Primary election is not required in cities and towns with a population of 3,499 or less as shown by the most recent federal census. Nonpartisan candidates shall be nominated by certificates of nomination.

(4) Nomination declarations, or certificates of nomination, shall be filed not later than 5 p.m., January 7, 1977.

(5) If a new alternative form of local government is adopted, all elected city, town, and county officers shall hold their respective offices until the new successors are elected and qualified. The new officials specified in the new alternative form shall be elected at the special primary and general elections authorized in this act although similar offices exist under the former form of government. One (1) less than the number of commissioners specified in the county form shall be nominated and elected.

The county commissioner elected on November 7, 1972 shall continue to hold office as a commissioner until his successor is elected in 1978 and qualified in 1979. Such commissioner retains his office under the provisions of



section 6(3) of the transition schedule of the 1972 Montana constitution. If the county is divided into districts, he shall represent the district that contains his legal residence. If the county apportionment plan includes the election of any commissioners at-large, he shall be one of the at-large commissioners.

If the terms of commissioners are to be overlapping, they shall draw lots to establish their respective terms of office at the first meeting of the commission.

(6) If the existing form of local government is retained, all elected city, town, and county officers shall hold their respective offices until the new successors are elected and qualified. Successors shall be elected at the special primary and general election authorized in this act for county officers whose term of office would otherwise terminate on the first Monday of January 1977 or the first Monday of March 1977.

Successors shall be elected at the special primary and general election for city or town officers whose term of office would otherwise terminate on December 31, 1977, or the first Monday of May 1977.

(7) The elections shall be governed by the election laws of the state of Montana. The election shall be conducted, vote returned and canvassed, and results declared in the manner provided by law for election of county officials. Votes cast for city, town, and county officials shall be counted, canvassed, and returned by county election officials. Any separate ballots or election supplies required for election of city or town officials shall be furnished or paid for by the city or town.

(8) Officers elected shall take office on May 2, 1977. They shall serve terms for the duration specified in the alternative form of government.

History: En. 16-5115.13 by Sec. 16, Ch. 513, L. 1975.

**16-5115.14. Organization of the commission.** (1) The first meeting of a new commission for a new form of government shall be held at 10 a.m. on May 2, 1977, at which time newly elected members shall take the oath of office prior to assuming the duties of office.

(2) If the terms of commissioners are to be overlapping, they shall draw lots to establish their respective terms of office.

History: En. 16-5115.14 by Sec. 17, Ch. 513, L. 1975.

#### Termination of Act

Section 12 of Ch. 477, Laws of 1977 read "Section 23 of Chapter 513 of Laws, 1975,

is amended to read as follows: 'Section 23. Automatic repealer. This act, except for sections 4, 6, 14, 15, 16, and 17 [16-5115.1, 16-5115.3, 16-5115.11 to 16-5115.14], terminates on June 30, 1977.'"

#### 16-5115.15 to 16-5115.17. Terminated.

##### Termination

Sections 16-5115.15 to 16-5115.17 (Secs. 18 to 20, Ch. 513, L. 1975), relating to judicial enforcement and review, effect of other laws, and construction of the act

pertaining to local government study commissions, terminated on June 30, 1977, pursuant to Sec. 23, Ch. 513, Laws 1975, as amended by Sec. 12, Ch. 477, Laws 1977.

16-5116 to 16-5121. Terminated.

Termination of Commission on Local Government, terminated on June 30, 1977, pursuant to Sec. 8, Ch. 221, L. 1974; Sec. 3, Ch. 453, L. 1977), established a temporary commis-























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